

4/5/99

## REGION 4 TITLE V FEE REVENUES

<b>ALABAMA</b> 12/95	1997 \$6,199,230 1996 4,864,466 1995 8,480,481
<b>Jefferson County, AL</b> Henry Burnett 205/930-1207 12/95	1998 \$1,055,580 1997 1,264,657 1996 1,201,857 1995 963,873
<b>Huntsville, AL</b>  Danny Shea 256/535-4206 12/95	1998 \$35,267 1997 31,112 1996 26,509 1995 26,737  *City's fiscal year is Oct 1 to Sept 30
<b>FLORIDA</b>  Bruce Mitchell 850/921-9506 10/95	1997 \$9,319,138 1996 8,669,795 1995 9,205,672 1994 9,436,531 1993 3,767,302 1992 3,550,914
<b>GEORGIA</b> 12/95 Ed Walker 404/363-7055	1997 Fees are currently being collected 1996 \$9,257,838 1995 8,645,595 1994 7,819,425 1993 7,938,709
<b>KENTUCKY</b> 12/95 Jackie Warner 502/573-3382	1999 \$6,781,800 (collected as of 3/12/99) 1998 6,912,400 1997 5,460,000 1996 6,031,000

<b>Jefferson County, KY</b>  Mitzi Powell 502/574-5237	FY99 \$1,229,796 FY98 1,157,512 FY97 1,249,346  *County fiscal year is July 1 - June 30
<b>MISSISSIPPI</b>  Wayne Anderson 601/961-5171	1999 \$4,367,622 1998 3,422,705 1997 3,339,951 1996 3,743,477 1995 3,425,987
<b>NORTH CAROLINA</b>  Russell Hageman 919/733-1490	1998 \$7.6 million (net after refund of surplus \$) 1997 6.6 million 1996 6.2 million 1995 5.2 million 1994 3.6 million (ramp-up) 1993 2.7 million (ramp-up) 1992 300,000 (ramp-up)  *State fiscal year is July 1 to June 30
<b>Forsyth County, NC</b>  Mary Schwenn 336/727-8060	1999 \$454,481 (projected) 1998 441,170 1997 439,251 1996 437,047  *County fiscal year is July 1 to June 30
<b>Mecklenburg Co., NC</b>  Joan Liu 704/336-5500	1999 \$147,033 1998 139,471 1997 139,938 1996 139,269
<b>Western NC</b>  Jim Cody 828/255-5655	1998 \$320,067 1997 205,922 1996 201,188  *Local's fiscal year is July 1 to June 30

<b>SOUTH CAROLINA</b>  Bill Gillardi 803/898-4110	1998 \$6,990,000 1997 6,950,000 1996 6,630,000  *State fiscal year is July 1 to June 30
<b>TENNESSEE</b>  Sandra Joyner 615/532-0066	1998 \$5,512,000 1997 5,451,000  *State fiscal year is July 1 to June 30
<b>Chattanooga, TN</b>  Diane Arnst 423/867-4321	1998 \$429,839 1997 438,039 1996 401,732  *County fiscal year is Nov. 1 to Oct. 31
<b>Knox County, TN</b>  Chris Sharp 423/215-2488	1999 \$ 29,052 (collected as of 3/18) 1998 181,586 1997 124,910 1996 142,273
<b>Memphis-Shelby Co., TN</b>  Mike Hekking 901/544-7653	1999 \$ 20,250 (collected as of 3/22) 1998 624,922 1997 504,881  *County revenues based on calendar year
<b>Nashville-Davidson Co., TN</b>  Rob Raney 615/340-5653	1998 \$ 80,000 (as of 3/17 - will finish collecting this month) 1997 343,675 1996 367,250 1995 745,000 (resulted in surplus - fee amt. was reduced)





5/29/2001

## REGION 4 STATE/LOCAL AGENCY TITLE V FEES

State/Local Agency	Title V Fee Amount (per ton)	Fee Basis	Number of Title V Sources	Number of Title V Permits Issued	Number of Title V FTE	Contact Person
<b>ALABAMA</b>	\$17 for FY00 \$20 for FY01 \$19.50 for FY02	Actual Emissions	316	202	77	Phil Davis 334/271-7875
Jefferson County, AL	\$22.50	Actual Emissions	48	39	10.6	Robert Barrett 205/930-1280
Huntsville, AL	\$19.50	Actual Emissions	12	12	NP	Danny Shea 256/535-4206
<b>FLORIDA</b>	\$25	Allowable or Actual Emissions	416	414	100	Bruce Mitchell 850/921-9506
<b>GEORGIA</b>	\$31 for FY00  Additional one- time flat fee of \$600, \$1150, or \$3000	Actual/Allowable Hybrid Calculation	468	259	112	Jeff Carter 404/363-7014
<b>KENTUCKY</b>	\$31.63	Actual Emissions	274	137	134**	Nina Hockensmith 502/573-3382
Jefferson County, KY	\$33.82 until 7/31/01 \$34.85 thereafter	Actual Emissions	41	23	16	Mitzi Powell 502/574-5237
<b>MISSISSIPPI</b>	\$20.00 (will increase to \$21 in FY02)	Allowable or Actual Emissions	353	328	57.7	Wayne Anderson 601/961-5171

<b>NORTH CAROLINA</b>	\$17.42 Additional annual flat fee of \$6074	Actual Emissions	466	141	125	Russell Hageman 919/733-1490
Mecklenburg County, NC	\$32 Additional annual facility fee of \$6000	Actual Emissions	14	13	2.4	Joan Liu 704/336-5500
Forsyth County, NC	\$29.62 Additional annual flat fee of \$6074	Actual Emissions	15	15	4.8	Peter Lloyd 336/727-2777
Western North Carolina	\$13.53 Additional annual flat fee of \$3000 for FY01	Actual Emissions	7	7	3.5	Bob Camby 828/255-5655
<b>SOUTH CAROLINA</b>	\$33.82 (will increase to \$34.87 in FY02)	Actual Emissions	301	191	145.4	Bill Gillardi 803/898-4110
<b>TENNESSEE</b>	\$21.70 \$13.00	Actual Emissions Allowable Emissions	306	180	92.2	Ron Culbertson (admin. serv.) Quincy Styke (program dev.) 615/532-0562
Nashville/Davidson County, TN	\$25.00	Allowable Emissions	15	15	5.5	Rob Raney 615/340-5653
Chattanooga/Hamilton County, TN	\$31.33 \$18.80	Actual Emissions Allowable Emissions	24	24	8.5	Errol Reksten 423/867-4321

Memphis/Shelby County, TN	\$29.65	Actual Emissions	41	23	11.8	Mike Hekking 901/544-7653
Knox County, TN	\$33.85	Actual Emissions	9	8	4	Chris Sharp 865/215-5913

NP = Information not provided by agency

\* Kentucky's FY00-01 budget is projected at \$7,400,000. Final surveys are not complete, so "per ton" fees are an estimate.

\*\* Kentucky's number of FTE indicates available positions; current staffing is less.



## REGION 4 TITLE V FEE REVENUES

<b>ALABAMA</b>	FY01 \$ 5.96 million FY00 4.69 million FY99 6.01 million FY98 5.13 million FY97 0.259 million (no fees charged this FY) FY96 8.68 million FY95 7.69 million  TOTAL = \$38.42 million
<b>Jefferson County, AL</b>	FY01 \$ 892,328 FY00 941,360 FY99 922,534 FY98 1,055,580 FY97 1,264,657 FY96 1,201,857 FY95 963,873  TOTAL = \$7,242,189
<b>Huntsville, AL</b>	FY01 \$ 17,000 (estimated) FY00 33,383 FY99 32,007 FY98 35,267 FY97 31,112 FY96 26,509 FY95 26,737  TOTAL = \$202,015
<b>FLORIDA</b>	FY01 \$10,369,654 (to date) FY00 9,405,996 FY99 9,682,969 FY98 9,377,533 FY97 9,319,138 FY96 8,669,795 FY95 9,205,672  TOTAL = \$66,030,757

<b>GEORGIA</b>	FY00 \$ 7,008,454 FY99 7,061,018 FY98 6,486,393 FY97 5,978,045 FY96 6,121,642 FY95 5,738,818  TOTAL = \$38,394,370
<b>KENTUCKY</b>	FY00-01 \$ 8,746,800 FY99-00 7,606,400 FY98-99 6,395,272 FY97-98 5,460,000 FY96-97 6,031,000  TOTAL = \$34,239,472
<b>Jefferson County, KY</b>	FY01 \$ 1,490,456 FY00 1,384,870 FY99 1,716,488 FY98 1,157,512 FY97 1,249,346 FY96 1,472,100 FY95 1,300,000  TOTAL = \$9,770,772
<b>MISSISSIPPI</b>	FY01 Not yet complete FY00 \$ 3,928,800 FY99 4,711,126 FY98 3,422,705 FY97 3,339,951 FY96 3,743,477 FY95 3,425,987  TOTAL = \$22,572,046
<b>NORTH CAROLINA</b>	FY00 \$ 7.9 million FY99 7.8 million FY98 7.7 million FY97 7.6 million FY96 7.9 million FY95 6.3 million  TOTAL = \$45.2 million

<b>Forsyth County, NC</b>	FY01    \$ 444,546 (to date) FY00    454,481 FY99    454,482 FY98    441,496 FY97    439,251 FY96    437,047  TOTAL = \$2,671,303
<b>Mecklenburg Co., NC</b>	FY01    \$ 188,730 FY00    211,105 FY99    151,083 FY98    139,471 FY97    139,938 FY96    139,269  TOTAL = \$969,596
<b>Western NC</b>	FY00    \$ 171,114 FY99    313,170 FY98    320,067 FY97    205,922 FY96    201,188 FY95    358,214  TOTAL = \$1,569,675
<b>SOUTH CAROLINA</b>	FY01    \$ 8.1 million (projected) FY00    8.3 million FY99    7.9 million FY98    6.99 million FY97    6.95 million FY96    6.63 million  TOTAL = \$44.9 million
<b>TENNESSEE</b>	FY00    \$ 4.3 million FY99    4.5 million FY98    5.5 million FY97    5.5 million FY96    4.9 million  TOTAL = \$24.7 million



Chattanooga, TN	2000	\$ 414,917
	1999	465,433
	1998	429,839
	1997	438,039
	1996	401,732
	TOTAL = \$2,149,960	
Knox County, TN	2000	\$ 182,790
	1999	197,015
	1998	181,586
	1997	124,910
	1996	142,273
	TOTAL = \$828,574	
Memphis-Shelby Co., TN	2000	Not collected yet
	1999	\$ 612,322
	1998	624,922
	1997	504,881
	TOTAL = \$1,742,125	
Nashville-Davidson Co., TN	FY00	\$ 318,442
	FY99	356,000
	FY98	356,050
	FY97	343,675
	FY96	367,250
	FY95	745,000
	TOTAL = \$2,486,417	
REGIONAL TOTAL = \$344,089,271		



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

NOV 20 2003

4APB-APS

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ronald C. Methier, Chief  
Georgia Department of Natural Resources  
Environmental Protection Division  
Air Protection Branch  
4244 International Parkway, Suite 120  
Atlanta, Georgia 30354

Dear Mr. Methier:

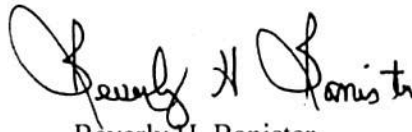
The purpose of this letter is to request from your agency a title V fee program update under the authority of 40 CFR Part 70 (State Operating Permit Programs). The Environmental Protection Agency (EPA) Region 4 is requesting this information in conjunction with efforts to begin a comprehensive review of the title V and New Source Review (NSR) programs operated by state and local agencies. The purpose of the comprehensive review is to identify the programmatic strengths within each state and local program and to determine whether there are areas that need improvement. A key component of each title V program review will be a survey of fee collection and utilization. The EPA's authority to require periodic updates of how fee revenues are collected and used is found at 40 CFR § 70.9(d).

Please respond to this request by providing information that addresses each item listed in the enclosed title V fee questionnaire. Your written response to this request should be provided by January 6, 2004. Submissions should be mailed to:

Kay T. Prince, Chief  
Air Planning Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303.

Thank you for your cooperation in this matter. Should you have any questions or wish to discuss this request, please contact Kay Prince at (404) 562-9026.

Sincerely,

A handwritten signature in black ink, appearing to read "Beverly H. Banister". The signature is fluid and cursive, with the first name "Beverly" and last name "Banister" clearly legible, and "H." in the middle.

Beverly H. Banister  
Director  
Air, Pesticides & Toxics  
Management Division

Enclosure

## TITLE V FEE QUESTIONNAIRE

1. Describe any changes, other than annual Consumer Price Index adjustments, that have been made to your title V fee revenue process since approval of your title V program (e.g., changes to the fee setting procedure, fee regulations, collection method, collection period, cost accounting, financial management system).
2. List the fee rate or fee schedule (and formulae, if applicable) for your past four fiscal years and current fiscal year, including any applicable emission-based fees, application fees, processing fees, etc. What were your total title V fee revenues for your past four fiscal years and what are your anticipated revenues for the current fiscal year?
3. If total title V fee revenues were not sufficient to cover all costs of the title V program for each of your past four fiscal years (or will not be for your current fiscal year), explain how those costs were (or will be) covered. If you collected any surplus title V fee revenues (i.e., total fees collected above what was needed to cover all costs of the title V program) during any of your past four fiscal years, identify and provide the status or disposition of those surplus funds. If you anticipate a surplus of revenues for the current fiscal year, discuss how that surplus will be dispensed.
4. If your title V fee revenues have been used for any purposes other than to support the title V program during your current or past four fiscal years, provide detailed information on how those funds were used, the date(s) they were dispensed, and whether they have been returned to your title V program account.
5. Describe the methodology or matrix your agency has used to account for title V funds separately from non-title V funds (i.e., federal grants and other agency funds) during the current and four previous fiscal years.
6. How does your agency differentiate and track the accumulation of title V expenses and non-title V expenses. For example, what system does your agency use to separate title V expenses from non-title V expenses for direct labor costs (e.g., full-time equivalent employees), direct non-labor costs (e.g., travel and equipment), indirect labor costs (e.g., secretarial and management overhead), and indirect non-labor costs (e.g., supplies, office space, utilities, generalized computers, etc.)?

# **Georgia Department of Natural Resources**

Environmental Protection Division, Air Protection Branch

4244 International Parkway, Suite 120, Atlanta, Georgia 30354

Phone: 404/363-7000; Fax: 404/363-7100

Lonice C. Barrett, Commissioner

Carol A. Couch, Ph.D., Director

January 6, 2004

Kay T. Prince, Chief  
Air Planning Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303



RE: Title V Fee Questionnaire

Dear Ms. Prince:

Enclosed are our responses to the Title V Fee Questionnaire sent to our office on November 20, 2003. If any additional information is needed, please call Dipan Shah at 404-363-7014.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Methier", is written over a circular embossed seal.

Ron Methier  
Branch Chief

Enclosures:

Title V Fee Questionnaire

cc: Dipan Shah  
Jimmy Johnston



## TITLE V FEE QUESTIONNAIRE

1. Describe any changes, other than annual Consumer Price Index adjustments, that have been made to your Title V fee revenue process since approval of your Title V program (e.g., changes to the fee setting procedure, fee regulations, collection method, collection period, cost accounting, financial management system).

*Georgia's Title V Program received an interim approval 12/21/1995. Following is information on changes made to 1) fee setting procedure, 2) fee regulations, 3) collection method, and 4) collection period since then.*

*Fee setting procedures are specified in a document entitled "Procedures for Calculating Air Permit Fees for Calendar Year XXXX" (where XXXX is the calendar year in question). This document is commonly referred to as the "fee manual." The fee manual has been updated every year or every two years and is incorporated by reference into an Air Quality Rule pertaining to Permit Fees [Rule 391-3-1-.03(9)], which is adopted into the Georgia Rules for Air Quality Control.*

*Table 1 shows the fee manuals starting from the one that was in place when Georgia's Title V permit program was approved until now; the date the fee manual was adopted into the Georgia Rules; the calendar year for which the fees were based; when the initial fee reports and payments were due; and the state fiscal year that those fees funded.*

*The fee collection method has not changed since the permit fee program was initiated in 1992. The permit fee manuals and forms are sent to the companies approximately two months before the permit fees are due. The companies calculate their fees in accordance with the appropriate fee manual and submit the fee reporting form and payment to a lock box specific for the Air Protection Branch Permit Fees. The actual fee calculations are not submitted. The companies are required to retain their calculations, which are subject to audits on an as needed basis.*

2. List the fee rate or fee schedule (and formulae, if applicable) for your past four fiscal years and current fiscal year, including any applicable emission-based fees, application fees, processing fees, etc. What were your total Title V fee revenues for your past four fiscal years and what are your anticipated revenues for the current fiscal year?

*Permit fees are calculated using a number of specific methods as specified in the permit fee manual(s). The basic concept is to multiply the allowable emission rate times the actual operations during the year (e.g., allowable lb/hr times actual hours operated during the year). This is then converted to tons for each pollutant. For those pollutants that are not subject to an allowable emission limit, tons of actual emissions are determined for the year in question. The total tons for each of the four pollutants (particulate matter, sulfur dioxide, nitrogen oxides, and volatile organic compounds) are multiplied by the appropriate \$/ton for that year. If the total tons for a particular pollutant are below the major source threshold, no fees are owed for that pollutant.*

*There are also minimum fees for certain categories of sources. Table 2 shows the fee schedules for the past for fiscal years FY2000 through FY2005.*

3. If total Title V fee revenues were not sufficient to cover all costs of the Title V program for each of your past four fiscal years (or will not be for your current fiscal year), explain how those costs were (or will be) covered. If you collected any surplus Title V fee revenues (i.e., total fees collected above what was needed to cover all costs of the Title V program) during any of your past four fiscal years, identify and provide the status or disposition of those surplus funds. If you anticipate a surplus of revenues for the current fiscal year, discuss how that surplus will be dispensed.

*Revenues were sufficient to cover all costs with no surplus. We do not anticipate surplus in current year.*

4. If your Title V fee revenues have been used for any purposes other than to support the Title V program during your current or past four fiscal years, provide detailed information on how those funds were used, the date(s) they were dispensed, and whether they have been returned to your Title V program account.

*Title V fee revenues have not be used for any purposes other than to support the Title V program.*

5. Describe the methodology or matrix your agency has used to account for Title V funds separately from non-Title V funds (i.e., federal grants and other agency funds) during the current and four previous fiscal years.

*An organizational and program/revenue number has been established to account for Title V funds.*

6. How does your agency differentiate and track the accumulation of Title V expenses and non-Title V expenses. For example, what system does your agency use to separate Title V expenses from non-Title V expenses for direct labor costs (e.g., full-time equivalent employees), direct non-labor costs (e.g., travel and equipment), indirect labor costs (e.g., secretarial and management overhead), and indirect non-labor costs (e.g., supplies, office space, utilities, generalized computers, etc.)?

*All Title V expense transactions are coded using a specific organizational and project number for the Title V program.*



**TABLE 1 – PERMIT FEE MANUALS SINCE TITLE V PROGRAM APPROVAL**

<b>Date of Permit Fee Manual</b>	<b>Date Adopted into Georgia Rules</b>	<b>Fees Based on Emissions During Calendar Year</b>	<b>Initial Reports and Payments Due</b>	<b>State Fiscal Year Funded</b>
May 1, 1995	June 28, 1995	CY1994	September 1, 1995	FY1996
April 2, 1996	May 29, 1996	CY1995	September 1, 1996	FY1997
August 1, 1997	December 3, 1997	CY1996 and CY1997	December 31, 1997 and September 1, 1998	FY1998 and FY1999
January 19, 1999	June 10, 1999	CY1998 and CY1999	September 1, 1999 and September 1, 2000	FY2000 and FY2001
April 30, 2001 <sup>1</sup>	June 27, 2001	CY2000	September 1, 2001	FY2002
February 26, 2002	June 26, 2002	CY2001	September 1, 2002	FY2003
March 25, 2003	May 28, 2003	CY2002	September 1, 2003	FY2004

*Note 1: There is a typo on some of the permit fee manuals, which say 2000.*

**TABLE 2 – FEE SCHEDULES FOR FY2000 THROUGH FY2004**

<b>Fiscal Year</b>	<b>\$/ton Fee</b>	<b>Other Fees<sup>1</sup></b>
FY2000	\$28/ton	Minimum Title V Fee = \$1400; NSPS Fee <sup>2</sup> = \$1000
FY2001	\$28/ton	Minimum Title V Fee = \$1400; NSPS Fee = \$1000
FY2002	\$31/ton	Minimum Title V Fee = \$2500; NSPS Fee = \$1500
FY2003	\$31/ton	Minimum Title V Fee = \$2500; NSPS Fee = \$1500
FY2004	\$32.50/ton	Minimum Title V Fee = \$2500; NSPS Fee = \$1000

*Note 1: EPD began charging a fee to Synthetic Minor Sources beginning with Fiscal Year 2002. The Synthetic Minor Fee is \$1000 and is in addition to any NSPS fee due. However, the Synthetic Minor Fee is not a Title V fee and is not used to fund Title V activities.*

*Note 2: The NSPS Fee is due in addition to Title V fee from any source that has at least one emissions unit subject to an NSPS standard, with certain exceptions.*





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JAN 20 2005

4APT-APB

Ronald C. Methier, Chief  
Air Protection Branch  
Environmental Protection Division  
Georgia Department of Natural Resources  
4244 International Parkway, Suite 120  
Atlanta, Georgia 30354

Dear Mr. Methier:

This correspondence is being sent to provide you with an official final copy of the Environmental Protection Agency (EPA) Region 4 report, which was completed as a result of the EPA Title V and New Source Review (NSR) program evaluation conducted on June 14<sup>th</sup> - 17<sup>th</sup>, 2004 (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Georgia Environmental Protection Department (GAEPD) to carry out the duties and responsibilities required to effectively run the Title V and NSR programs, as well as find out how EPA can best assist the GAEPD in meeting these commitments.

I would like to thank you and your staff for your cooperation throughout the evaluation. Your staff responded to the questionnaires and provided all requested material in a timely and professional manner. In addition, I commend you on the performance of both of these programs. Both programs are operating at a very high level of proficiency. These programs are important tools to implement measures protecting air quality for the citizens of Georgia. We appreciate your efforts to ensure that Georgia has effective air programs

If you or your staff have any questions regarding the report, please do not hesitate to contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division

Enclosure

## **Georgia Environmental Protection Department Title V and New Source Review Program Review**

The U.S. Environmental Protection Agency (EPA) Region 4 committed to conduct detailed title V and New Source Review (NSR) program reviews for all state and local programs that have at least ten title V major sources within their jurisdiction. These evaluations also include a review of the title V fees collected and billed annually. This commitment results from an agreement between the EPA Office of Air and Radiation and the EPA Office of Inspector General which required EPA to conduct title V program evaluations of all state and local programs. EPA Region 4 decided, in addition to title V, to use this opportunity, when applicable, to evaluate the NSR programs at each of the state and local programs. The program reviews are to be completed by the end of Fiscal Year 2006. The Georgia Environmental Protection Department (GAEPD) program review was conducted the week of June 14 through June 17, 2004 in Atlanta, Georgia. Prior to arrival at the Georgia State office, EPA emailed a list of 22 title V sources to GAEPD that EPA planned to review as part of the overall program review. Upon EPA's arrival at GAEPD, EPA spent the afternoon of the first day reviewing the permit files. The following morning, an entrance interview was conducted between EPA and key staff of the GAEPD explaining the program areas Region 4 would be inquiring into during the review. The following parties attended the initial meeting: Randy Terry (EPA Region 4), Brandi Johnson (EPA Region 4), Art Hofmeister (EPA Region 4), Laurie Savoy (EPA Region 4), James Purvis (EPA Region 4), Heather Abrams (GAEPD) and Jimmy Johnston (GAEPD).



# Georgia Title V Program Review

## 1. Program Review

*Note - the headings in this section duplicate the headings in the title V program review questionnaire administered during the visit.*

### A. Title V Permit Preparation and Content

The GAEPD has issued 100 percent of all initial title V permits. GAEPD began to receive permit applications in 1996 and started processing them in 1997 in the order in which the applications were received. During the early stages of issuing permits, GAEPD was delayed issuing permits until EPA White Papers on application and permit content were completed. Once these white papers were received, GAEPD was able to process the applications in a timely manner. At the beginning of each application review, GAEPD sent a letter to each source requesting an updated application. The GAEPD estimated that more than 50 percent of its initial permit applicants submitted updated information. In order to ensure compliance with permit conditions, permit writers worked closely with compliance staff to determine if any compliance issues existed. Section 11.10 of the permit application allows the facility to self-report non-compliance. Anything reported in this section was resolved prior to the permit being drafted. Where it was determined that a facility was out of compliance, the GAEPD included specific milestones and dates in the permit to return the facility to compliance.

To improve their permit writing and processing time, GAEPD developed a procedures document that outlines procession procedures, renewal procedures, and modification procedures. In addition, GAEPD conducted staff training on procedures (formal and periodic) and has made it accessible on their shared drive. To ensure quality assurance, GAEPD incorporated an internal review process with industrial source monitoring and compliance staff. Once the internal reviews are complete, the package is submitted to program management for review prior to sending the permit to the facility for public noticing. The facility is then provided with an opportunity to review their permit during the draft stages. GAEPD will make modifications to the permit if the facility notifies GAEPD of any significant problems discovered during their review.

GAEPD has made multiple specific efforts to streamline their permits. To the extent possible, permit writers clearly specify the most stringent requirements in their entirety within the permit. If multiple standards apply to a unit for the same pollutant (particularly those that are expressed in the same unit), only the most stringent is included. The regulatory citation would include the less stringent standards and identify them as "subsumed." This is a routine part of the permitting process and when such happens, it is documented in the permit narrative. In addition, GAEPD prefers paraphrasing the federal standard method when possible, and include within the permit a reference to where the full requirement is located.

GAEPD uses their permit narrative as the statement of basis. This document contains all the justifications for the permit conditions. GAEPD works to ensure that each statement of basis

explains, at a minimum, the rationale for monitoring as well as applicability decisions and any exemptions. In order to ensure consistency in developing the statement of basis, the GAEPD has developed a boiler plate document for the staff to follow when completing a permit narrative.

In discussing the overall strengths and weakness of the format of title V permits, GAEPD believes that the technical completeness, readability and enforceability are strengths of the program. No weaknesses were noted by GAEPD.

#### **B. General Permits**

GAEPD does not issue general permits.

#### **C. Monitoring**

In order to ensure that its operating permits contain adequate monitoring, GAEPD permit writers make this determination on a case-by-case basis. Their recommendation is then reviewed and comments are provided by the testing/monitoring staff. EPA's Periodic Monitoring guidance may be used as a reference tool, as well as past performance test data on the source, or a similar source. To ensure that the permit writers are well prepared to make the case-by-case monitoring decisions, GAEPD, in addition to conducting in-house training on an as needed basis, has been an active participant in EPA sponsored training. GAEPD has also been very aggressive in including additional monitoring requirements. Of the initial permits issued, every permit with monitoring requirements, other than MACT, had additional monitoring included. If monitoring is not required by the underlying requirements, then monitoring is added, when appropriate, to any emission unit that has a reasonable chance of violating the underlying requirement. GAEPD has noticed that there has been significant improvement in source compliance since the addition of monitoring to the permits.

#### **D. Public Participation and Affected State Review**

GAEPD does not publish any notices of draft title V permits. In Georgia, it is the permittee's responsibility to publish the public notice at their expense. Permittees are required to publish the public notice in the "legal organ for the affected area." However, GAEPD does utilize both the internet and a list server as means for notifying the public of permits, but does not consider these as official methods of notifying the public. In addition, GAEPD maintains a mailing list to notify any persons interested in title V permits. Anyone interested in being on this mailing list can submit a request, by phone, email, or mail to the Air Protection Branch, to be included. There is no fee charged for inclusion. Persons on the mailing list receive notification of GAEPD's intent to issue a permit. Anyone wishing to make copies of a specific permit can come to the GAEPD Air Protection offices and have copies made. The first 25 pages are free of charge. Every additional page copied is billed at a rate of 10 cents per page. The only exceptions GAEPD currently allows are for sources that request a copy of its permit or when a state requests a copy of a source permit.

During the public comment period, the public can obtain permit related information, such as the permit applications, draft permits, and statement of basis, either from the GAEPD website or



visit the air branch office to review the files. In the event that the application is not submitted electronically, a hard copy of the application is made available at the county courthouse or the GAEPD district office nearest to the source. The GAEPD currently has no statutory requirements to reach out to any specific communities beyond the standard public notification process and does not provide notices in any language other than English.

On the occasions that GAEPD has been asked by the public to extend the public comment period they generally have not granted extensions because Georgia regulations do not include provisions for extending the public comment period. However, although they do not extend the comment period, GAEPD does respond to comments received after the comment period has expired. In addition, GAEPD utilizes an Outreach and Public Marketing section to assist them in all public relations on the permits. GAEPD has received public comments on approximately sixteen percent of the permits issued throughout the State and revised approximately two percent due to public comments. GAEPD noticed a significant increase in the number of public comments submitted on title V permits following the EPA title V training conducted in December 2000. The vast majority of these comments have been submitted by one organization and their attorney. Specific communities, such as environmental justice communities, have been active in commenting on GAEPD's permits. In the event that a permit receives comments that result in a significant change to the draft permit, then that permit is re-noticed. In order to ensure quality permits, GAEPD works with the permittees prior to public noticing the permit. GAEPD has noticed no consistent trends in the types of comments received on permits and has found that permits can generally be issued in a timely manner.

GAEPD's procedure for notifying affected states of draft permits consists of sending an email to every state adjacent to Georgia. GAEPD notifies the Eastern Band of Cherokee Indians when draft permits are open for comment. To date, the GAEPD has not received comments from any affected states or Tribes.

#### **E. Permit Issuance/ Revision/ Renewal**

One hundred percent of GAEPD's initial title V permits have been issued. GAEPD has, on average, taken between 120 and 150 days to process all permits. The permits are processed on a first in, first out basis with no regard to the complexity of the revision. GAEPD is working towards a goal of 90 days to complete a permit revision.

On occasion, GAEPD has exceeded the part 70 time frames for permit issuance (18 months for significant revisions, 90 days for the minor permit revisions and 60 days for the administrative revisions). The main cause of these delays is due to the backlog created from the processing of the initial title V permits. In order to streamline the issuance of these revised permits, GAEPD now references previous narratives, combines multiple revisions for a singular source into one revision and paraphrases the applicable regulations when possible. In addition, GAEPD now utilizes a database to track all permit revisions to completion, as they move through the system. GAEPD has developed a guidance document used by permit writers, consultants, and permittees to assist in evaluating whether a proposed revision qualifies as an administrative amendment, off-permit change, significant or minor permit revision or whether it requires that the permit be reopened.



GAEPD is currently in the process of issuing title V permit renewals and has established a schedule of 18 months from application receipt to proposal of the permit. Overall, GAEPD believes that with its staff and training plan, it has crested the learning curve for title V and most of its initial problems have been solved. In addition, with the exception of processing Compliance Assurance Monitoring (CAM) plans, the renewal process has been much faster. The vast majority of the renewal applications submitted have been timely and complete. At the time of the program review, GAEPD had received a total of ninety (90) renewal applications. Of these submittals, 88 have been deemed timely and complete.

#### **F. Compliance**

Georgia requires all title V deviation reports to be certified by a responsible official and included at the time of submittal. GAEPD requires only violations of the permit terms to be reported as deviations and requires that written reports must be submitted for deviations. Phone calls to report deviations are not required and do not meet the requirements of this provision. Each deviation report must contain the probable cause of the deviation, any corrective actions taken and the magnitude and duration of the deviation. Following the receipt of a deviation report that is not accurate, GAEPD gives the source 30 days in which the facility can submit a corrected report and then seeks enforcement actions for any sources that report late. An example would be if a facility signed their annual certification saying there were no noncompliance issues, but a Notice of Violation (NOV) had been sent to the facility during the year. GAEPD would request the certification be changed to indicate the NOV. GAEPD also takes enforcement actions for all violations reported.

GAEPD has developed a compliance certification form, consistent with GAEPD regulations, and based on whether compliance is continuous or intermittent. The compliance form is required for use by all sources and has been utilized by 99 percent of all sources reporting. The form requires each source to specify the monitoring method used to determine compliance where there are options for monitoring, including which method was used in cases where more than one method exist.

#### **G. Resources and Internal Management Support**

GAEPD's current title V fee rate is \$32.50 per ton of pollutant. Their title V expenses are tracked using a separate budget for title V and non-title V expenses. GAEPD's title V revenue from each source is mailed into a lockbox and separated out from the other revenue. GAEPD then receives a report on the amount of title V revenue received. Despite the separate budgets for title V and non-title V revenues, both are currently stored in the same bank account. However, GAEPD has a database that tracks the amount of revenue received from each source. GAEPD must provide a better accounting demonstration of the utilization of title V funds. An informal survey which is several years old was provided by GAEPD and indicates that approximately 83 percent of their employees work time is dedicated to issues related to title V and 17 percent related to other activities. A financial breakdown of the bank account shows that approximately 88 percent of the monies contributed to the account are title V monies and 12 percent are from other sources. EPA believes that this is not an adequate demonstration that title V monies are

being utilized only for title V activities. After conversations with GAEPD, EPA was informed that a separate account was available to house title V revenue. EPA stressed to GAEPD the importance of having their title V funds contained in a separate account and GAEPD is planning to switch their title V funds into this account as soon as feasible.

- Since the program evaluation, GAEPD has informed EPA that they believe a separate account to contain only title V revenue was not feasible because it would be difficult for facility owners to send payments to multiple lockboxes in order to pay the necessary fees for their facility. GAEPD is able to track all title V fees from the non-title V fees using the database. Additionally, GAEPD has separate budget codes for all fund sources in order to track the various expenditures per source.

GAEPD currently employs 28 full-time equivalent (FTE) permit writers and has approval to increase that number to 35. These permit writers do not work 100 percent of the time on title V permits. Their additional job responsibilities include time devoted to minor and major NSR, synthetic minors, permit by rule, and emission reduction credits. In order to accurately identify the time allocated to title V activities, GAEPD needs to utilize some form of tracking software or, at a minimum, they must conduct an annual survey of the permit writers on the amount of time devoted to title V and non-title V activities.

GAEPD has recently experienced a very high turnover rate, which has had an adverse impact on permit renewal issuance. The process to hire replacement staff is a lengthy process. It takes an average of two months to get permission to advertise positions deemed critical. Recent hires have been a mixture of recent college graduates and older, more experienced employees. GAEPD's salary structure is designed to allow them to offer competitive salaries with other State agencies to retain employees, but less than the salaries offered by private industry or federal employment. The salary structure does not allow for adjustments of current staff salaries. Therefore, new hires can often earn more in two years than GAEPD's more experienced staff. This has led, in some cases, to staff turnover. GAEPD provides many opportunities for staff to obtain key training throughout the year. These training activities include courses provided internally by GAEPD and by EPA. To better facilitate the learning experience, each new permit writer is assigned a mentor to provide additional assistance. GAEPD has also developed a narrative template for each permit writer to utilize to ensure that all the necessary components are contained within their statements of basis. GAEPD strongly believes that the two biggest internal roadblocks to permit issuance has been: 1) a low pay scale, which creates a high staff turnover, causing GAEPD to have a hard time holding on to institutional knowledge; and 2) the lack of enough staff to handle the backlog.

Georgia does not currently have environmental justice (EJ) legislation, policy or general guidance which would help to direct their permitting efforts. GAEPD does not currently provide EJ training to their permit writers, but the Outreach and Marketing Unit does undergo EJ training.

## **H. Suggested Improvements**

GAEPD must provide a better accounting demonstration of the utilization of title V funds. As



noted above, GAEPD uses a singular account to hold title V monies and synthetic minor fees. The only available survey indicates that the monies are not spent in the same relative percentage as the permit engineers time is used (i.e, 83 and 17 percent vs 88 and 12 percent). EPA believes that this is not an adequate demonstration that title V monies are being utilized only for title V activities.

- Since the program evaluation, GAEPD has agreed to look into a better accounting mechanism for tracking their title V fees. In addition to the accounting procedures, GAEPD will investigate a tracking method in order to better track the amount of time each staff member spends on title V work versus non-title V work.

## **2. Permit Reviews**

EPA reviewed the contents of 16 title V permit files and found that, in general, all of the required components of the official file records were present, easily identified and well maintained.

## **Georgia New Source Review Program Review**

GAEPD has a SIP-approved NSR program with its own NSR rules. GAEPD therefore has authority to issue both major and minor NSR permits. Because there has been an ozone nonattainment area in Georgia in recent years, the applicable major NSR permitting regulations are the regulations for prevention of significant deterioration (PSD) and the nonattainment NSR regulations.

GAEPD's organizational structure for air permitting comprises the central office in Atlanta. All major and minor NSR permits are processed in the Atlanta office.

The headings in the following report duplicate the headings in the NSR program review questionnaire administered during the visit.

As an appreciated aid to EPA, GAEPD provided a copy of the program review questionnaire annotated with GAEPD's answers. For many questionnaire items, the answers provided by GAEPD are more detailed than indicated in the summary discussion below. The answered questionnaire from GAEPD will be on file at EPA Region 4 for reference if needed.

As a further introductory note, GAEPD rules incorporate by reference the federal PSD rules in 40 CFR 52.21. Therefore, GAEPD uses the same PSD definitions as EPA used prior to the December 31, 2002 rulemaking.

Region 4 has reviewed virtually all of GAEPD's major NSR permits in recent years, so no major NSR permits were evaluated as part of the on-site review.

### **1. Common Program Requirements (PSD and Nonattainment NSR)**

#### **A. Netting**

GAEPD follows appropriate netting procedures. When an application for a modification of an existing major source is received, GAEPD reviews previous permits to assess, for example, which past emissions reductions have already been relied upon for netting purposes. One item in the questionnaire is whether the reviewing agency has a record of projects that use emissions reductions to net out of major new source review. GAEPD indicated that the record is not always clear for older projects. This is not necessarily a problem. However, GAEPD could consider updating the record for older projects at opportune times, for example, when a source that netted out in the past is undergoing a current modification.

#### **B. Routine Maintenance, Repair and Replacement (RMRR)**

GAEPD is familiar with the RMRR evaluation approach and has made five formal RMRR determinations in the last five years. EPA provided an official opinion letter to assist in two of these determinations. GAEPD generally follows EPA's four-factor RMRR assessment approach.

Consideration of the "purpose" factor alone would not be used to make an RMRR determination except that GAEPD would probably disqualify a project as routine if the purpose was clearly to increase capacity. GAEPD has on occasion talked with other state reviewing authorities to discuss the "frequency" factor in an RMRR determination.

### **C. Synthetic Minor Limits**

GAEPD maintains a database to track minor source permits. The manager of GAEPD's Stationary Source Permitting Program also keeps a spreadsheet of projects. GAEPD is cognizant of the need for practically enforceable permit conditions, especially major NSR avoidance conditions. A laudable feature of GAEPD's minor source permitting program is the production of a publicly available "narrative" to explain each permit. Many permits, especially those for volatile organic compounds emissions, contain a notification requirement to report monthly trends that, if continued, might lead to exceeding an annual major source/major modification threshold.

### **D. Pollution Control Projects (PCP) Exclusion**

For electric utility steam generating unit (EUSGU) PCP projects, GAEPD's rules incorporate federal PCP exclusion rules by reference. For non-EUSGU PCP projects, GAEPD follows EPA's 1994 guidance on PCP exclusions. (With regard to the 1994 guidance and determining which non-EUSGU PCP projects can be considered environmentally beneficial, GAEPD expressed an interest in receiving additional direction from EPA.) When granting a PCP exclusion, GAEPD prefers that emissions decreases should be much higher than collateral emissions increases. Collateral increases of toxic air pollutants not regulated by NSR rules are evaluated using GAEPD's "Guideline for Ambient Impact Assessment of Toxic Air Pollutant Emissions." Most of the PCP exclusions granted by GAEPD have been for combustion of hazardous air pollutants at pulp and paper mills to comply with the pulp and paper industry hazardous air pollutant cluster rule.

### **E. Fugitive Emissions**

GAEPD uses the federal rule definition of fugitive emissions. Fugitive emissions are considered in NSR applicability assessments for both new sources and modifications of existing sources, but only if the source is in one of the listed source categories. GAEPD would allow reductions in fugitive emissions to be creditable in a netting analysis only if the fugitive emissions are quantifiable and if fugitive emissions count toward NSR applicability.

### **F. Modeling**

GAEPD generally follows the modeling procedures in 40 CFR part 51, Appendix W. Modeling is performed for PSD permits and PCP exclusions. The need for modeling of minor sources is determined on a case-by-case basis.

GAEPD requires applicants to submit a modeling protocol for PSD permit applications. Meteorological data required for modeling are specified by GAEPD.



Emission source inventories for modeling are obtained from AIRS and PSD databases, supplemented by file reviews as needed. A PSD inventory is maintained on GAEPD's website. Modeled emissions are generally allowable emissions except that actual emissions are accepted if use of allowable emissions produces exceedances of a PSD increment.

GAEPD typically performs its own modeling to confirm that worst-case modeling results have been obtained.

If modeling demonstrates a violation of an ambient standard or a PSD increment but the applicant's units are not a significant contributor to the violation, GAEPD will grant a permit for the applicant's project. GAEPD would then contact owners of sources having a significant contribution to seek resolution of the modeled violation. This has occurred in some instances.

Assessment of toxic air pollutants not regulated by NSR rules is conducted based on GAEPD's "Guideline for Ambient Impact Assessment of Toxic Air Pollutant Emissions."

#### **G. Stationary Source Determinations**

If the separation distance between two facilities is greater than 20 miles, GAEPD considers the two facilities to be separate sources. For separation distances of less than 20 miles, a case-by-case single source determination is made. Regarding the single source determination criterion of same industrial grouping, GAEPD would consider the support relationship between two facilities as well as the SIC code of the facilities.

#### **H. Debottlenecking and Increased Utilization**

GAEPD takes into account debottlenecking and increased utilization when assessing emissions increases for major NSR applicability purposes. GAEPD follows EPA's policy of calculating actual-to-potential emissions increases for debottlenecked units and project-generated incremental emissions increases for increased utilization units.

- GAEPD expressed an interest in obtaining additional guidance from EPA on debottlenecking and increased utilization.

#### **I. Relaxation of Limits Taken to Avoid Major NSR**

GAEPD's title V operating permits now identify conditions imposed for major NSR avoidance purposes. This procedure simplifies identification of possible relaxation actions. GAEPD indicated that it has started including such identification conditions in construction permits as well as in operating permits.

- Questions often arise about the so-called "one time doubling" or "second bite at the apple" policy. This is the policy that under some circumstances an existing minor source can have an increase in emissions up to the PSD major source threshold (100 tpy or 250 tpy depending on source category) without triggering PSD review. EPA explained that

this applies only when, say, a new process line is being added to an existing source. It does not apply to modifications of existing operations/equipment at the source. EPA recommends that GAEPD check to make sure that the policy is being used correctly.

## **J. Circumvention/Aggregation Issues**

In attainment areas, GAEPD checks to assess whether modifications taking place close in time might be part of the same project. Clarification is sought from the source owner if needed. In the Atlanta 1-hour severe (previously serious) ozone nonattainment area, cumulative nitrogen oxides and volatile organic compounds emissions over a five-year period must be assessed for major modification NSR applicability.

## **2. Prevention of Significant Deterioration (PSD)**

### **A. Program Benefits Quantification**

Although GAEPD has not quantified the air quality benefits of the PSD program, they believe that such benefits have occurred through both the issuance of PSD permits and permits issued to avoid PSD permit review. PSD permits require the use of BACT controls, which are frequently more stringent than required under other Federal and State regulations. PSD permitting has helped to ensure that compliance with the National Ambient Air Quality Standards (NAAQS) is maintained and to reduce air quality degradation (i.e., increment consumption) for areas in compliance with the NAAQS through the PSD air quality modeling requirements. GAEPD further believes that air quality benefits as significant as those achieved through PSD permitting have been achieved through the avoidance of PSD permitting requirements. It is common for facilities to install less polluting processes or air pollution control equipment than would otherwise be required through state and Federal requirements in order to keep emissions below the PSD major source threshold or, for existing major sources, to keep emissions increases from facility upgrades and expansions below the major modification thresholds. Since Georgia issues several dozen "synthetic minor" PSD avoidance permits per year compared to less than a dozen PSD permits per year, the emissions avoided from synthetic minor permitting is believed to be substantial.

### **B. Best Available Control Technology (BACT)**

GAEPD requires use of the top-down procedure. Information sources for identification of possible control options include EPA references and GAEPD's own extensive PSD permitting experience.

If a cost evaluation is included as part of a PSD best available control technology (BACT) evaluation, the usual cost value calculated is "cost effectiveness" - dollars per ton of pollutant removed. The tons removed value is calculated with reference to a baseline "uncontrolled" emission rate. GAEPD stated that it accepts as baseline an emissions rate equal to an applicable emissions standard such as a federal new source performance standards (NSPS). However, the



guidance in EPA's "New Source Review Workshop Manual" is that requirements such as NSPS requirements "are not considered in calculating the baseline emissions."

- EPA recommends further discussion with GAEPD on this point.

To establish compliance averaging times for BACT emissions limits, GAEPD generally uses the reference test method averaging period for a particular pollutant. Previous permit precedents are also taken into account.

GAEPD generally expects applicants to follow EPA procedures for BACT cost evaluations. However, a different approach may be accepted if considered more relevant. Total cost effectiveness is given primary consideration in a BACT cost evaluation. If the applicant's BACT cost evaluation is clearly deficient, GAEPD might perform its own independent evaluation if cost data are readily available.

GAEPD is aware that each BACT determination should be entered in EPA's RACT/BACT/LAER Clearinghouse (RBLC). GAEPD stated that it currently has a backlog of about 20 determinations that need to be added to the RBLC.

- EPA encourages GAEPD to eliminate this backlog as soon as practicable.

### **C. Class I Area Protection for PSD Sources**

GAEPD requires PSD permit applicants to consult with the appropriate federal land manager (FLM) for projects located within 200 km of a Class I area. Applicants of large-emission projects located more than 200 km from the nearest Class I area also may be required to consult with the FLM. If the applicant does not send a copy of the permit application to the Class I area FLM when a Class I area impact analysis is indicated, GAEPD will do so. GAEPD also sends to the FLM copies of preliminary and final determinations and other pertinent documents. In many cases, GAEPD contacts the FLM by telephone early in the permitting process. Applicants are encouraged to work directly with the FLM when appropriate.

### **D. Additional Impacts - Soils, Vegetation, Visibility, Growth**

GAEPD does not specify exact procedures for assessing additional impacts. Regarding vegetation impacts, GAEPD assumes that compliance with the primary and secondary national ambient air quality standards is generally adequate for vegetation protection.

### **E. Pre-construction Monitoring**

GAEPD allows use of data from state-operated ambient air quality monitoring stations to satisfy pre-construction monitoring requirements if applicable. Post-construction monitoring has never been required.

## **F. Increment Tracking Procedures**

Baseline dates are county-specific. Minor source baseline dates are listed in an internal directory for access by GAEPD personnel. GAEPD maintains an inventory of increment-consuming sources but does not track increment consumption. The emission source inventory generally shows allowable emission rates. For projects located near another state, permit applicants must obtain emissions information for that state's sources directly from the state permitting agency.

## **G. Endangered Species Act (ESA)**

GAEPD has a SIP-approved NSR permitting program. ESA requirements are not applicable.

### **3. Nonattainment NSR**

#### **A. Program Benefits**

GAEPD believes that the nonattainment NSR program provides an incentive to reduce emissions. The agency has never had to issue a major NSR permit in the Atlanta ozone nonattainment area, the Georgia nonattainment area that has been in existence for the longest period of time.

#### **B. NSR Offsets**

GAEPD has an emissions offset bank for the Atlanta 1-hour ozone nonattainment area. GAEPD validates proposed emission reduction credits (ERCs) and issues an ERC certificate when validated. ERCs never expire but are discounted after 10 years (to an amount no less than 50 percent of the original credit). Banked ERCs can be used as offsets within the nonattainment area or to satisfy BACT/offset requirements for the contributing area outside the nonattainment area.

GAEPD carefully tracks use of ERCs in the bank, including verification that ERCs are surplus when used. For emissions reductions that are not in the bank, however, GAEPD indicated that tracking is not as standardized as the tracking of banked ERCs and that a more formal procedure might be advisable for tracking use of emissions reductions generated outside the bank.

Banked ERCs are removed from the bank when used. Proposed offsets not obtained from banked ERCs are evaluated on a case-by-case basis to confirm that they were not used in a previous permit.

#### **C. LAER Determinations**

GAEPD has not yet had to issue a major nonattainment NSR permit and therefore has not yet had to apply specific LAER determination procedures.



#### **D. Alternatives Analysis**

GAEPD has not yet had to issue a major nonattainment NSR permit and therefore has not yet had to apply specific procedures for an alternatives analysis.

#### **E. Compliance of Other Major Sources in the State**

GAEPD has not yet had to issue a major nonattainment NSR permit. The requirement to certify compliance for other major sources in the state is part of GAEPD's nonattainment area NSR rules.

### **4. Minor NSR Programs**

#### **A. NAAQS/Increment Protection**

Minor sources typically do not have to be modeled individually. GAEPD's Data & Modeling Unit periodically reviews permit files to identify minor sources that consume increment. These sources are entered into a spreadsheet suitable for modeling if needed. Major PSD-increment consuming sources are listed on a publicly available website.

#### **B. Control Requirements**

GAEPD does not have a minor source BACT requirement except for sources of volatile organic compounds and nitrogen oxides that are defined as major because of their location in the Atlanta ozone nonattainment contributing area but that would be minor if located elsewhere. Georgia's SIP includes emission standards for various source categories.

#### **C. Tracking Synthetic Minor NSR Permits**

GAEPD maintains various database lists with information on minor NSR permits. Regulatory requirements avoided by a minor source are identified in the permit or in the permit narrative. Case-by-case prompt deviation notification requirements are specified in a permit, with specific requirements depending on source type.

### **5. Public Participation**

#### **A. Public Notification**

GAEPD provides public notice for major NSR permits but not generally for minor permits. Notification is also made through a public advisory mailing list that includes certain local officials plus anyone else who has asked to be on the list. In addition, GAEPD posts information on its publicly available website including preliminary determinations, draft permits, public notices, project summaries, and permit applications for substantive major projects. Affected adjacent states receive notification of projects in writing.



GAEPD does not have a procedure for extending the initial public comment period. However, comments received after the close of the comment period may be considered.

All public comments received are reviewed. GAEPD estimates that less than five percent of draft permits have been changed based on public comments, other than EPA comments. If GAEPD intends to issue a final permit that differs significantly from the original draft permit, a second draft permit may be issued with additional opportunity for public comment.

A public hearing will be held on a draft permit if requested by anyone. Notification of a public hearing is published in a local newspaper at least 30 days in advance of the hearing.

In the discussion of how notifications of draft NSR permits are made (for example, notifications to affected states), there appeared to be some question as to the exact procedures followed. GAEPD and EPA discussed the advisability of having a written checklist for NSR permit processing to make sure that all required notifications have been made.

- Since the program evaluation, GAEPD is developing PSD procedures to ensure that all public notifications are properly made. These procedures will outline the administrative steps necessary to issue a PSD permit. GAEPD believes these procedures will be developed by March of 2005.

## **B. Environmental Justice (EJ)**

EJ considerations for Georgia projects are discussed in the title V program review section elsewhere in this report.

### **6. Program Staffing and Training Issues**

As of the time of the review, GAEPD had 39 staff personnel including administrative personnel, who spend at least part of their time in the NSR program. Personnel training includes a "New Employee Training Program" that covers NSR, title V, SIP content, and administrative matters. EPA training resources and EPA documents (such as the "New Source Review Workshop Manual") are also used for training purposes. GAEPD indicated that additional NSR training by EPA might be helpful.

### **7. General NSR Program Issues**

GAEPD evaluates AP-42 emission factors taking into account the accuracy rating of the factors and the availability of other related emissions information. If use of AP-42 factors indicates emissions rates that are close to an allowed level, GAEPD may require site-specific testing.

During the preceding year, GAEPD issued about six PSD construction permits. During the same period, GAEPD issued about 540 non-major permits. No nonattainment NSR permits were issued.

GAEPD estimates that the average time to issue a PSD permit (from the time an application is deemed complete) is 8 to 14 months.

Condensable particulate matter emissions are included in PSD applicability assessments and for other regulatory purposes.

Providing information to the regulated community enhances compliance with permitting requirements. GAEPD stated that it often provides speakers for various industrial conferences to cover NSR topics (permitting requirements, pollution control projects, etc.). This is a worthwhile practice and EPA recommends its continuation.

## **8. Effective Construction Permits**

Based on EPA Region 4's experience in reviewing GAEPD's PSD permits, GAEPD creates effective construction permits with appropriate permit conditions.

In light of the U.S. Supreme Court decision in *Alaska Department of Environmental Conservation v. EPA et al.*, EPA explained the importance of good information in the public record to explain the basis for NSR permits. EPA commends GAEPD for the information typically included in preliminary determinations for PSD permits and for developing a "narrative" for minor NSR permits.

## **Conclusion**

At the conclusion of the onsite portion of the Title V and NSR program reviews, Region 4 personnel met with key GAEPD officials to conduct an exit interview. During this exit interview Region 4 shared the findings of the review and laid out a timeframe for when the final report would be completed. In addition, Region 4 queried GAEPD about ways to possibly improve the program reviews. GAEPD responded that the evaluation was thorough and had no additional suggestions for improving the evaluations. Personnel in attendance from EPA Region 4 were Randy Terry, James Little, Kay Prince, Katy Forney, and Stan Kukier. GAEPD officials in attendance included Ron Methier, Chief of the Air Protection Branch, Heather Abrams, and Jimmy Johnston.

Overall, EPA believes that GAEPD is operating both the title V and NSR programs at a high level of proficiency and looks forward to working with the GAEPD to address the areas needing improvement in the future.





September 26, 2011

James A. Capp, Chief  
Air Protection Branch  
Environmental Protection Division  
Georgia Department of Natural Resources  
4244 International Parkway, Suite 120  
Atlanta, Georgia 30354

Dear Mr. Capp:

This correspondence is being sent to provide you with a final copy of the U.S. Environmental Protection Agency - Region 4 report, which was completed as a result of the EPA Title V program evaluation conducted on April 28, 2011, (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Georgia Environmental Protection Department (EPD) to carry out the duties and responsibilities required to effectively run the title V programs, as well as find out how EPA can best assist the EPD in meeting these commitments.

I would like to thank you and your staff for your cooperation throughout the evaluation. Your staff responded to the questionnaires and provided all requested material in a timely and professional manner. In addition, EPA believes that the EPD is operating the title V program at a high level of proficiency and looks forward to continuing to working with the EPD to maintain a high quality title V program. I commend you on the performance of your title V program.

If you have any questions regarding the report, please do not hesitate to contact me or have your staff contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division

Enclosure

# **Georgia Environmental Protection Department**

## **Title V Program Review**

### **Executive Summary**

The Georgia Environmental Protection Department (EPD) initial program review was conducted the week of June 14 through June 17, 2004, and is kept on file at the U.S. Environmental Protection Agency - Region 4 office in Atlanta, Georgia. Based on the information gathered from the title V program evaluations and the implementation of new title V permit requirements, EPA committed to conduct a second round of title V program reviews for all state and local programs that had at least 20 title V major sources within their jurisdiction by the end of FY 2010.

The second program evaluation of the EPD title V program was conducted on August 1– 2, 2007, in Atlanta, Georgia. This evaluation consisted of five separate sections: resources and internal management (including a title V funds review); public participation; districts and locals call; permit file review; and follow up from previous program evaluation. The final report was issued on December 5, 2007 and is on file at the EPA Region 4 office in Atlanta, Georgia.

EPA conducted its third program evaluation of the GA EPD title V program on April 28, 2011. This evaluation consisted of a review of the title V budgeting and accounting process, permit file review, public participation and follow-up from previous evaluations. Highlights of this report include the reduction of the title V backlog (title V applications in-house older than 18 months) from a high of 38 applications down to two at the time of the evaluation. In addition, this report addresses the incorporation of a rollover feature to prevent the mingling of title V and non-title V funds. Overall, EPA believes that EPD is operating the title V program at a high level of proficiency. Upon finalization, this report will be kept on file at the EPA Region 4 office.

## **A. Resources and Internal Management Support**

At the time of the evaluation, EPD employed a full staff of 35 full-time equivalent (FTE) permit writers. Since the program evaluation in 2007, staff turnover has been minimal. EPD permit writers do not work 100 percent of the time on title V permits. Their additional job responsibilities include time devoted to minor and major new source review, synthetic minors, permit by rule, and emission reduction credits. Since the initial program evaluation, EPD has initiated an annual analysis of the amount of time spent by staff working on title V and non-title V activities to determine the percent of time spent working on title V and non-title V activities. Use of this information allows EPD to determine if their current staffing levels are correct or if adjustments need to be made. This analysis is also used as the basis used by EPD in determining the percentage of title V monies to be contributed to indirect costs associated to title V.

EPD's title V fee rate for fiscal year (FY) 2010 is \$34.00 per ton of pollutant up to 4000 tons with a minimum title V fee of \$3800.00 dollars. Since 2008, EPD has collected the following title V revenue:

FY2008 - \$12,128,080.15

FY2009 - \$12,728,622.38

FY2010 - \$12,805,045.49

This reflects actual revenue received, including past-due fees collected during the fiscal year in question. Fee collections that were deferred by EPD from one fiscal year to the next are included in the fiscal year in which they were actually paid.

In FY 2010, EPD collected \$12,805,045.49 dollars in total title V revenue. EPD has projected their title V revenue for FY 2011 to be \$11,064,495.00, which would be the lowest amount of title V fees collected since FY 2006 when \$11,080,190.00 dollars were collected. This will represent a decrease in revenue of 15.7 percent. The primary cause of this decrease was due to the recession and because several facilities' coal usage declined significantly. In addition, an administrative fee was added for late submitters. This may add some small amount of revenue in future years.

EPD projects to have their budget increase to slightly more than \$12,000,000.00 dollars in FY 2012 in part due to a fee increase in dollars per ton for coal-fired power plants which will pay \$35.84/ton and a slight increase in coal usage at several facilities. In addition, the minimum fee for title V sources will be increased to \$4100.

EPD's title V expenses are tracked using a separate budget code for title V and non-title V expenses. EPD's title V revenue from each source is mailed into a lockbox and separated out from the other revenue. During the second program evaluation, in 2007, EPA discussed with EPD concerns about the co-mingling of title V funds and other non-title V funds including general treasury funds. Specifically, EPD had no ability to rollover title V funds. Each year the title V program was either losing a surplus of title V funds to the general treasury or a shortfall in title V revenue was being covered by obtaining funds from the general treasury; both of which are in direct conflict with the requirements of 40 CFR part 70. EPA recommended that EPD establish a method of accounting which allows for a rollover of title V funds. Since that evaluation, the EPD has established the ability to rollover title V funds from one year to another. This provision gives EPD the ability to ensure that all title V funds remain separate and used only for title V purposes.



## **B. Public Participation**

EPD does not publish any notices of draft title V permits. In Georgia, it is the permittee's responsibility to publish the public notice at their expense. Permittees are required to publish the public notice in the "legal organ for the affected area." EPD does utilize both the internet and a list server as means for notifying the public of permits, but does not consider these as official methods of notifying the public. In addition, EPD maintains a mailing list to notify any persons interested in title V permits. Anyone interested in being on this mailing list can submit a request to be included by phone, email, or mail to the Air Protection Branch. There is no fee charged for inclusion. Persons on the mailing list receive notification of EPD's intent to issue a permit. Anyone wishing to make copies of a specific permit can come to the EPD Air Protection offices and have copies made.

Title V public participation requirements mandate that public notices be published in a newspaper of general circulation and that the permit applications, draft permits, statement of basis, and all relevant supporting materials be made available for review by interested parties. EPD is exceeding public participation requirements by providing access to all public notices via their website at [http://www.gaepd.org/pls/enfo/notice\\_search.q\\_field](http://www.gaepd.org/pls/enfo/notice_search.q_field) as well in a local newspaper. In addition, during the public comment period, the public can obtain permit related information such as the public notice, permit applications, draft permits, and statement of basis, either from the EPD website or visit the air branch office to review the files. In the event that the application is not submitted electronically, a hard copy of the application is made available at the county courthouse or the EPD district office nearest to the source. The EPD currently has no statutory requirements to reach out to any specific communities beyond the standard public notification process and does not provide notices in any language other than English.

On the occasions that EPD has been asked by the public to extend the public comment period they generally have not granted extensions because Georgia regulations do not include provisions for extending the public comment period. However, although they do not extend the comment period, EPD does respond to comments received after the comment period has expired. In addition, EPD utilizes an Outreach and Public Marketing section to assist them in all public relations on the permits.

## **C. Renewal Permits and File Review**

EPD has issued 100 percent of their initial title V permits and is in the process of issuing renewal title V permits. At the time of the program evaluation, EPD had 98 initial and renewal title V applications in-house with 92 having been received within the past 12 months. EPD had issued 75 renewal permits over the past 12 months and had only two title V renewal applications in-house for longer than 18 months. This represents a substantial reduction in their title V backlog (applications older than 18 months) of title renewal permits. EPD has consistently been working to eliminate their backlog of title V renewal permits. At one point EPD's backlog had grown to a high of 38 permits. Since that time, EPD made eliminating the backlog a priority and has been able to reduce the backlog of title V renewal applications down to two with plans on completely eliminating the backlog within the next 12 months.

As part of the program evaluation, EPA conducted an administrative review of five title V permit files. The administrative review was to determine if all the appropriate content was available in the files should a person request to see the file. Information located in the file should consist of any comments submitted during the public comment period, any responses by EPD to comments, copies of the draft, and proposed permits, proof of publications, statement of basis and public notices. All the necessary

information was found in the files. EPA recommends EPD document for the file instances when public comments are not received and the draft/proposed title V permit is issued as the final permit without change.

## **Conclusion**

Overall, EPA believes that EPD is operating the title V program at a high level of proficiency and commends EPD for reducing their title V renewal backlog and addressing the budget issue regarding mingling title V funds. EPA looks forward to continuing to work with the EPD in the future.







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 08 2015

Karen Hays, Chief  
Air Protection Branch  
Environmental Protection Division  
Georgia Department of Natural Resources  
4244 International Parkway, Suite 120  
Atlanta, Georgia 30354

Dear Ms. Hays:

This correspondence is being sent to provide you with a final status of the U. S. Environmental Protection Agency – Title V Program Evaluation conducted on July 29, 2015, and the follow-up information provided by Georgia Environmental Protection Division (GA EPD) on August 12, 2015. The purpose of the program evaluation was to review the status and the ability of the GA EPD to carry out the duties and responsibilities required to effectively run the title V programs, as well as find out how the EPA can best assist the GA EPD in meeting these commitments.

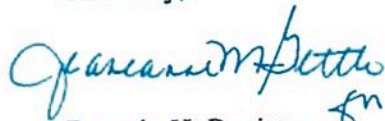
The title V program evaluation provided an opportunity for the EPA to ensure that the GA EPD was fulfilling the requirements of part 70. The program evaluation consisted of a review of the title V revenue and expenses, staffing plans, public participation and permit file review. During the evaluation, no major areas of concern were noted. However, during the file review portion of the evaluation, several source files were found to be missing key documents. Upon inquiry, the missing files were readily located. This was noted and attributed to the program transitioning from maintaining a hard copy filing system to an electronic filing system. While this explanation addresses our concern, we encourage the GA EPD to quality assure that the complete files are being transmitted to the electronic filing system. No other concerns were found during the evaluation.

I would like to thank you and your staff for your cooperation throughout the evaluation. Your staff responded to the questionnaire and provided all requested material in a timely and professional manner. These questionnaires will be kept on file at the Region 4 office and a copy of this letter will be posted to the EPA Region 4 website.

In conclusion, the EPA believes that the GA EPD is operating the title V program at a high level of proficiency and looks forward to continuing to working with the GA EPD to maintain a high quality title V program. I commend you on the performance of your title V program.

If you have any questions regarding the report, please do not hesitate to contact me or have your staff contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

A handwritten signature in blue ink, appearing to read "Beverly H. Banister", with a stylized "fn" written below the name.

Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

## *Air Quality*

# Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues

Report No. 15-P-0006

October 20, 2014



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**Report Contributors:**

Rick Beusse  
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Dan Howard  
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**Abbreviations**

CAA	Clean Air Act
CFR	Code of Federal Regulations
CPI	Consumer Price Index
EPA	U.S. Environmental Protection Agency
Florida DEP	Florida Department of Environmental Protection
Illinois EPA	Illinois Environmental Protection Agency
Indiana DEM	Indiana Department of Environmental Management
Louisiana DEQ	Louisiana Department of Environmental Quality
NACAA	National Association of Clean Air Agencies
New York State DEC	New York State Department of Environmental Conservation
NOD	Notice of Deficiency
OAQPS	Office of Air Quality Planning and Standards
OAR	Office of Air and Radiation
Ohio EPA	Ohio Environmental Protection Agency
OIG	Office of Inspector General
Pennsylvania DEP	Pennsylvania Department of Environmental Protection
South Coast AQMD	South Coast Air Quality Management District
Texas CEQ	Texas Commission on Environmental Quality

**Cover photo:** A smokestack at a coal-fired power plant. (EPA photo)

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# At a Glance

## Why We Did This Review

We conducted this evaluation to determine whether the U.S. Environmental Protection Agency's (EPA's) oversight of state and local Clean Air Act Title V programs' fee revenues is effective in identifying and obtaining corrective actions for issues related to collecting, retaining and allocating fee revenues. Title V was expected to, among other things, improve compliance and enforcement of states' air pollution programs. Title V permit fees are used to implement and enforce the permitting program, including acting on new permit applications and revisions or renewals of existing permits; monitoring facility compliance; taking enforcement actions for noncompliance; performing monitoring, modeling and analysis; tracking facility emissions; and preparing emissions inventories.

## This report addresses the following EPA goals or cross-agency strategies:

- Addressing climate change and improving air quality.
- Protecting human health and the environment by enforcing laws and assuring compliance.
- Launching a new era of state, tribal, local and international partnerships.

Send all inquiries to our public affairs office at (202) 566-2391 or visit [www.epa.gov/oig](http://www.epa.gov/oig).

The full report is at: [www.epa.gov/oig/reports/2014/20141020-15-P-0006.pdf](http://www.epa.gov/oig/reports/2014/20141020-15-P-0006.pdf)

## Enhanced EPA Oversight Needed to Address Risks From Declining Clean Air Act Title V Revenues

### What We Found

We found significant weaknesses in the EPA's oversight of state and local Title V programs' fee revenue practices. While some EPA regions had worked to resolve issues, we found annual Title V program expenses often exceeded Title V revenues, and both had generally been declining over the 5-year period we reviewed (2008–2012). For example, our survey of nine of the nation's largest permitting authorities showed that annual Title V revenues were not sufficient to cover annual Title V expenses 62 percent of the time from 2008 to 2012. Specifically, we noted a \$69 million shortfall out of \$672 million in expenses incurred by these authorities from 2008–2012. Also, four of the nine permitting authorities used or said they could use non-Title V revenue to fund their Title V programs, a practice not allowed by the Code of Federal Regulations (CFR) under the 40 CFR Part 70. In some instances the EPA was aware of these issues, but corrective actions had either not been taken or were insufficient. EPA's oversight has been hampered by:

- Lack of a national strategy for conducting oversight of Title V fees.
- Outdated guidance.
- Lack of financial or accounting expertise among EPA program staff.
- Reluctance by some regions to pursue formal corrective actions.

**Weaknesses in the EPA's oversight of Title V revenues and expenditures jeopardize program implementation and, in turn, compliance with air regulations for many of the nation's largest sources of air pollution.**

The agency's weaknesses in identifying and obtaining corrective actions for Title V revenue sufficiency and accounting practices, coupled with declining resources for some permitting authorities, jeopardizes state and local Title V program implementation. These weaknesses also increase the risk of permitting authorities misusing funds and operating in violation of the requirements of 40 CFR Part 70. Periodic monitoring of facility compliance, one aspect of Title V used by the EPA and authorized Title V programs to protect human health and the environment, could be adversely impacted by insufficient funding.

### Recommendations and Planned Agency Corrective Actions

We recommend that the EPA assess, update and re-issue its 1993 Title V fee guidance as appropriate; establish a fee oversight strategy to ensure consistent and timely actions to identify and address violations of 40 CFR Part 70; emphasize and require periodic reviews of Title V fee revenue and accounting practices in Title V program evaluations; address shortfalls in staff expertise as regions update their workforce plans; and pursue corrective actions, as necessary. The agency agreed with all recommendations and provided corrective action plans that meet the intent of the recommendations.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

October 20, 2014

**MEMORANDUM**

**SUBJECT:** Enhanced EPA Oversight Needed to Address Risks  
From Declining Clean Air Act Title V Revenues  
Report No. 15-P-0006

**FROM:**

Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

**TO:**

Janet McCabe, Acting Assistant Administrator  
Office of Air and Radiation

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The EPA offices having primary responsibility over the issues evaluated in this report are the Office of Air and Radiation's Office of Air Quality Planning and Standards and the applicable air offices in the 10 EPA regions.

**Action Required**

The agency agreed with all eight recommendations and provided acceptable planned corrective actions and completion dates that meet the intent of these recommendations. These recommendations are resolved; therefore, no further response is needed for these recommendations. All recommendations are considered open, with agreed to corrective actions pending. Please update the EPA's Management Audit Tracking System as you complete the planned corrective actions. Please notify my staff if there is a significant change in the agreed-to corrective actions. Should you choose to provide a response to this final report, we will post your response on the OIG's public website, along with our memorandum commenting on your response. You should provide your response as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended.

We will post this report to our website at <http://www.epa.gov/oig>.



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# Chapter 1

## Introduction

### Purpose

We conducted this evaluation to determine whether the U.S. Environmental Protection Agency's (EPA's) oversight of state and local Clean Air Act (CAA) Title V programs' fee revenue practices is effective in identifying and obtaining corrective actions for issues related to collecting, retaining and allocating fee revenues in accordance with the Code of Federal Regulations (CFR) in 40 CFR Part 70.

### Background

#### *Purpose of CAA Title V Operating Permits*

In 1990, Congress enacted permitting requirements designed to reduce violations and improve enforcement of air pollution laws for the largest sources of air pollution. The CAA operating permit program covers the most significant sources of air pollution in the United States. The more complex sources—such as large petroleum refineries and chemical production plants—can have hundreds or even thousands of emission points. A properly implemented Title V program provides assurance of major source compliance, and also reduces air pollution emissions, increases regulatory certainty and improves air quality.

Title V permits contain all of the air quality requirements for an individual major source. Title V does not generally impose new air quality control requirements. Instead, it requires permits to contain monitoring, reporting and recordkeeping provisions to ensure that affected sources, federal and state regulators, industry, and the public know the air quality requirements the source must meet to comply with the CAA. The regulations that establish minimum Title V program standards for permitting authorities are in 40 CFR Part 70.

**Title V permits, also referred to as operating permits, are legally enforceable documents that permitting authorities issue to major stationary sources—and a limited number of smaller sources—of air pollution that allow these sources to operate. Most Title V permits are issued by 117 state, local and territorial permitting authorities that have been approved by the EPA.**

According to the timeline established by the CAA Amendments in 1990, all initial Title V permits should have been issued by 1997. Permits were to be renewed every 5 years thereafter. As of June 30, 2012, there were more than 15,000 Title V permits in the United States.



### ***Title V Fees Sufficiency Requirements***

Each permitting authority with an EPA-approved Title V program is required by the CAA to establish and collect fees from owners of major stationary sources sufficient to fund all reasonable Title V program costs. Permitting authorities are required to use those fees solely for permit program costs. As required under Title V, in 1992 the EPA issued rules and regulations in 40 CFR Part 70 for implementing state<sup>1</sup> air quality permitting systems. In the preamble to the 40 CFR Part 70 final regulation, the EPA described the requirement to establish an adequate permit fee schedule as a key provision of Title V. In regard to Title V fees, 40 CFR Part 70 requires that:<sup>2</sup>

- (a) *Fee Requirement.* The state program shall require that the owners or operators of Part 70 sources pay annual fees, or the equivalent over some other period, sufficient to cover the permit program costs. The state program shall also ensure that any fee required by this section will be used solely for permit program costs.
- (b) *Fee schedule adequacy.* The state program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs.

Generally, according to Part 70, permit program costs include:

- Preparing regulations and guidance for implementing and enforcing the permit program.
- Reviewing and acting on permit applications, revisions or renewals.
- Permit development.
- Compliance and enforcement (to the extent that these activities occur prior to the filing of an administrative or judicial complaint or order).
- Emissions and ambient monitoring, modeling and analysis.
- Preparing inventories and tracking emissions.

The EPA's Part 70 regulations provide flexibility in the type of fees that permitting authorities collect as Title V revenues. A permitting authority's fee schedule may include emissions fees, application fees, service-based fees, other types of fees or any combination thereof. However, according to the EPA's preamble to Part 70, the true measure of the adequacy of a program's fee schedule is whether the fee schedule results in the collection of adequate revenues to support all of their permit program costs.

While the basic measure of fee schedule adequacy is collection of enough fees to cover all permit program costs, the CAA and Part 70 allowed for permitting

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<sup>1</sup> Under 40 CFR Part 70, the permitting authority can be a state air pollution control agency, local agency, other state agency, or other agency authorized by the EPA Administrator to carry out a permit program under Part 70. It can also be the EPA Administrator in the case of an EPA-implemented program.

<sup>2</sup> 40 CFR 70.9 fee determination and certification.



authorities to adopt a presumptive minimum fee schedule. In approving initial fee structures, EPA considered program funding to be adequate if fees were collected at or above the presumptive minimum rate per ton (initially \$25 per ton of regulated pollutants, adjusted according to the Consumer Price Index (CPI)). However, Part 70 states that adequacy of the presumptive minimum fee rate is rebuttable. According to Part 70, if the EPA determines—either through comments received or of its own initiative—that there are “serious questions”<sup>3</sup> regarding whether the fee schedule is sufficient to cover all permit program costs, the EPA shall require the permitting authority to submit a detailed accounting that its fee structure meets the requirements of Part 70.

The EPA stated that the presumption of fee adequacy based upon adoption of the presumptive minimum fee would be most useful during the initial round of program approvals. In its preamble to Part 70, EPA indicated that it expected the utility of the presumptive minimum fee would diminish as a means of determining fee schedule adequacy as permit programs developed and permitting authorities—as well as the EPA—gained a greater expertise in estimating program financial needs and fee revenues. The presumptive minimum fee rate (\$/ton) for the 12-month period September 1, 2013, through August 31, 2014, is \$47.52.

According to the EPA’s 1993 Operating Permits Program fee schedule guidance:<sup>4</sup>

- Only funds collected from Part 70 sources may be used to fund a state’s Title V permits program. Legislative appropriations, other funding mechanisms such as vehicle license fees, and Section 105 funds cannot be used to fund these activities.
- The fee revenue is to cover the reasonable direct and indirect costs of the permits program. This revenue may not be used for any purpose except to fund the permits program. However, Title V does not limit state discretion to collect fees pursuant to independent state authority beyond the minimum amount required by Title V.

The EPA’s 1993 fee schedule guidance also allowed permitting authorities significant flexibility in establishing a fee structure as long as revenues are sufficient to cover all reasonable direct and indirect costs of the permit program. The agency also noted in its guidance document that changes in fee structure would be “inevitable.” The EPA noted that changes may be required in response to periodic audits or from a revised number of Part 70 stationary sources of air pollution.

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<sup>3</sup> 40 CFR 70.9 (b)(5)(ii).

<sup>4</sup> Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V. August 4, 1993, memorandum from the Director, EPA Office of Air Quality Planning and Standards to EPA Air Division Directors, Regions 1–10.

### ***Authority for EPA Oversight of Fees and Revenue***

CAA Title V authorizes the EPA to monitor whether a state is adequately administering and enforcing its EPA-approved permitting program.<sup>5</sup>

Pursuant to Section 7661a(i)(1):

[whenever] the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, ... the Administrator shall provide notice to the State.

Legal obligations are only triggered once notice is given to the state (i.e., once the EPA initiates its formal enforcement authority). Whenever the EPA Administrator makes a determination that a permitting authority is not adequately administering or enforcing a Part 70 program (or any portion thereof), the Administrator is required to notify the permitting authority of the determination and the reasons. Upon issuance of a Notice of Deficiency (NOD), if the state does not correct the deficiencies within 18 months, the EPA is required to take over and administer the Title V program.<sup>6</sup> Among the reasons that the EPA may consider as inadequate the administration or enforcement of a Part 70 program are a permitting authority's failure to collect, retain or allocate fee revenues consistent with 40 CFR Part 70.9.<sup>7</sup>

### **Responsible Offices**

Both the EPA's Office of Air and Radiation (OAR) and the EPA's regions are responsible for overseeing EPA-approved Title V programs. Specifically:

**OAR:** OAR—through its Office of Air Quality Planning and Standards (OAQPS)—establishes overall policy and performs some Title V fee oversight functions, often in concert with EPA regions. OAQPS' functions include:

- Developing national Title V program rulemakings, policy and guidance.
- Reviewing public petitions asking the EPA to object to state-issued Part 70 Title V permits.
- Responding to congressional and executive branch requests for information.

**EPA Regions:** EPA regional offices are primarily responsible for overseeing individual Title V permitting authorities. Regional oversight activities include:

- Review of permitting authority submittals and revisions to permitting authority programs.
- Periodic review of permitting authority programs.
- Review and comment on draft permits.
- Review of monitoring or other reports required by permits.

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<sup>5</sup> 42 U.S.C. § 7661a(i).

<sup>6</sup> 42 U.S.C. § 7661a(i)(4); 40 CFR 70.10(b)(4).

<sup>7</sup> 40 CFR 70.10.



- Title V program evaluations and fee audits.
- Responses to public petitions.
- Informal communications with permitting authorities (including periodic phone calls and meetings).
- Making findings of program deficiencies and issuing NODs.

In 2003, OAQPS provided guidance to Regional Air Division Directors for conducting program evaluations. The guidance included a questionnaire to use for reviewing permitting authorities. The questionnaire included evaluation questions related to Title V revenue and accounting practices. The 2003 guidance states that it would be acceptable to do both a program evaluation and a fee review at the same time. The guidance also allows for preparation of a common report and provides that if previous fee and overall program reviews indicated no problems it is not necessary to conduct a fee review for a particular program.

OAR's National Program Guidance from 2010 to 2014 included expectations for regions to conduct program evaluations of state operating permit programs. The 2014 guidance contains a commitment that each region conduct one Title V program evaluation annually and complete a report within the fiscal year.

## Scope and Methodology

We sought to determine whether the EPA's oversight of state and local Title V programs' fee revenue practices has been effective in identifying and obtaining corrective actions for issues related to collecting, retaining and allocating fee revenues in accordance with federal regulations. To do so, we obtained and reviewed applicable federal laws, regulations and guidance related to CAA Title V fee adequacy and the EPA's related oversight responsibilities.<sup>8</sup> We also interviewed OAQPS managers and staff to identify additional oversight activities for the Title V programs.

We obtained and reviewed EPA regions' program evaluation reports. We reviewed reports completed by the regions on their state and local agencies' permitting programs since the inception of the Title V program. We analyzed the reports to gain an understanding of how EPA regions have used program evaluations to oversee Title V fee and expenditure implementation and accounting for their permitting authorities. In all, we reviewed 121 program evaluation reports completed by the 10 EPA regions from September 2003 to January 2013.

We conducted a survey of all 10 EPA regions to further assess the extent of their oversight activities of Title V program fees and accounting. We also developed and administered an electronic survey to obtain operational, performance, financial (i.e., fee structure, revenues and expenses), and other data directly from

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<sup>8</sup> This evaluation focused on EPA oversight of Title V fee revenues and expenses, and did not evaluate all aspects of the EPA's oversight of state and local agencies' Title V programs.



nine of the nation's largest state and local permitting authorities.<sup>9</sup> Prior to its use, we provided the draft survey to OAQPS and the six regions that oversee the permitting authorities for their comment and input, and revised the survey based on their comments. The survey was used to collect information on:

- Permitting authorities' operations, including size of the permitting authority, number of permits, employment, and 2008–2012 trends in revenues and expenses.
- How the permitting authorities assess performance, including performance statistics related to inspections and enforcement actions.
- Communications between the EPA and the permitting authority related to Title V fee accounting and revenue issues and program performance.
- The adequacy of EPA Title V fee accounting and revenue guidance.
- Permitting authority activities funded by Title V revenues.
- The sufficiency of a permitting authority's current and future Title V funding.
- The anticipated impact on state and local agencies' Title V resources of having to issue Title V permits for greenhouse gas emissions.<sup>10</sup>

Our sample covered nine permitting authorities that oversee 45 percent of the nation's active Title V permits. These nine permitting authorities oversaw 6,727 of the 15,104 Title V permits as of June 30, 2012. The nine permitting authorities are overseen by six EPA regions. Table 1 lists the permitting authorities, the EPA region that oversees each authority, and the number of active permits overseen by each authority.

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<sup>9</sup> We selected nine of the nation's largest permitting authorities (by total permits). We limited the sample to no more than three permitting authorities from any one EPA region. This was to ensure that we did not overemphasize a particular EPA region, while capturing the larger permitting authorities in the country. The selection was based on OAQPS data on active Title V permits as of June 30, 2012.

<sup>10</sup> We asked this question prior to the June 23, 2014, United States Supreme Court decision addressing the application of stationary source permitting requirements to greenhouse gases (*Utility Air Regulatory Group v. Environmental Protection Agency* (No. 12-1146)). As a result of the Supreme Court decision, the EPA will no longer apply or enforce the requirement that a source obtain a Title V permit solely because it emits or has the potential to emit greenhouse gases above major source thresholds. Therefore, we do not believe the anticipated impact on state and local Title V programs' resources will be as significant as had been estimated prior to the Supreme Court decision.

**Table 1: Active Title V permits for the nine permitting authorities surveyed as of June 30, 2012**

Permitting authority	EPA region	Number of active permits
New York State Department of Environmental Conservation	2	398
Pennsylvania Department of Environmental Protection	3	808
Florida Department of Environmental Protection	4	435
Illinois Environmental Protection Agency	5	490
Indiana Department of Environmental Management	5	611
Ohio Environmental Protection Agency	5	543
Louisiana Department of Environmental Quality	6	738
Texas Commission on Environmental Quality	6	2,275
South Coast Air Quality Management District (covers the Los Angeles, California, area)	9	429
<b>Total</b>		<b>6,727</b>

Source: Office of Inspector General (OIG) analysis of EPA Title V permit data, 2012.

After reviewing and analyzing survey responses, we interviewed representatives from each of the nine permitting authorities to clarify any responses that appeared incomplete or unclear. We also obtained additional supporting documentation as needed to confirm the responses. We conducted follow-up interviews with each of the six regions responsible for overseeing the nine permitting authorities to obtain their views on the Title V fee information we obtained. We relied on data obtained from permitting authorities through our survey and interview processes, and did not independently verify all of the data provided to us by the permitting authorities. The information we obtained does not constitute a finding of deficiency as defined in 40 CFR Part 70.

We conducted this performance audit from June 2012 to July 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

### **Prior Reports**

- **EPA OIG Report No. 2002-P-00008, *EPA and State Progress in Issuing Title V Permits*, March 29, 2002.** The OIG identified key factors, including insufficient resources, that caused delays in issuing Title V permits by selected state and local agencies. The OIG recommended that EPA regions be required to expeditiously conduct fee protocol reviews and ensure that state and local agencies act on review findings.
- **EPA OIG Report No. 2003-P-00005, *EPA Region 6 Needs to Improve Oversight of Louisiana's Environmental Programs*, February 3, 2003.** The OIG found that Region 6 staff had not followed headquarters'

1998 guidance for conducting Title V fee audits and were unaware as to whether Louisiana employees were properly charging personnel costs.

- **EPA OIG Report No. 2005-P-00010: *Substantial Changes Needed in Implementation and Oversight of Title V Permits If Program Goals Are To Be Fully Realized*, March 9, 2005.** The OIG found that, in 2003, OAR shifted emphasis from regional permit reviews to program evaluations of state and local agencies' Title V programs, regions had not completed all of the program evaluations for the state and local agencies they oversee, and the EPA had issued a NOD in an instance where the state or local agency did not collect sufficient Title V fees.
- **EPA OIG Report No. 12-P-0113, *EPA Must Improve Oversight of State Enforcement*, December 9, 2011.** The OIG found that while the EPA's national goal called for states to inspect 100 percent of Title V major sources every 2 years, states inspected an average of 89 percent of these facilities in the 2-year period, and only eight states met the EPA's 100-percent goal. Also, the OIG found that the EPA set a national goal that states enter 100 percent of high-priority violations into EPA data systems within 60 days, but states only entered 35 percent of high-priority violations in that time frame and only two states met the 100-percent goal.



## **Chapter 2**

### **EPA Needs to Improve Oversight of Title V State and Local Program Fee Revenue Practices**

We found significant weaknesses in the EPA's oversight of state and local Title V programs' fee revenue practices for identifying and obtaining corrective actions to collect, retain and allocate fee revenues in accordance with 40 CFR Part 70. While some EPA regions have worked to resolve these issues, annual Title V program expenses often exceeded revenues for the permitting authorities surveyed. Specifically, annual Title V revenues were not sufficient to cover annual Title V expenses 62 percent of the time from 2008 to 2012 for the permitting authorities we surveyed. Of the \$672 million in expenses incurred over a 5-year period by these authorities, we noted a \$69 million shortfall in revenues raised over that same time period. This shortfall strained Title V account balances, and four of the nine authorities used or said they could use non-Title V revenue to fund their Title V programs. EPA regions' proposed corrective actions for some instances had either not been taken or were insufficient to correct the problems. EPA oversight has been hampered by:

- Lack of a national strategy for conducting Title V fee oversight.
- Outdated guidance.
- Lack of financial or accounting expertise among program staff.
- Reluctance by some regions to pursue formal corrective actions.

The EPA's weaknesses in identifying and obtaining corrective actions for issues related to Title V revenue sufficiency and accounting practices, coupled with declining resources for some permitting authorities, jeopardize effective state and local Title V program implementation. It also increases the risk of permitting authorities misusing funds and operating in violation of 40 CFR Part 70. Compliance monitoring—one aspect of Title V used by the EPA and authorized Title V programs to protect human health and the environment—could be adversely impacted by insufficient funding.

#### **EPA Has Placed Less Emphasis on Oversight of Title V Revenues, Expenses and Accounting in Recent Years**

Since the 1990 CAA Amendments first required Title V operating permits for major stationary sources, the EPA has overseen development, approval and implementation of Title V programs using a variety of oversight activities. For example, the EPA conducted the following activities to oversee permitting authorities on issues related to Title V revenues, expenses and accounting:

- Review of state and local regulations during the initial Title V program approval process.
- Response to public petitions.
- Communications with state and local agencies.
- Independent fee audits.
- Periodic Title V program evaluations.
- Issuance of NODs.

However, the EPA's oversight of Title V program revenues, expenses and accounting has changed over the years, with the agency lately placing less emphasis on overseeing these aspects of the Title V program.

The EPA issued several Title V guidance documents in 1993. The fee schedule guidance provided guidance related to Title V fees in the following areas:

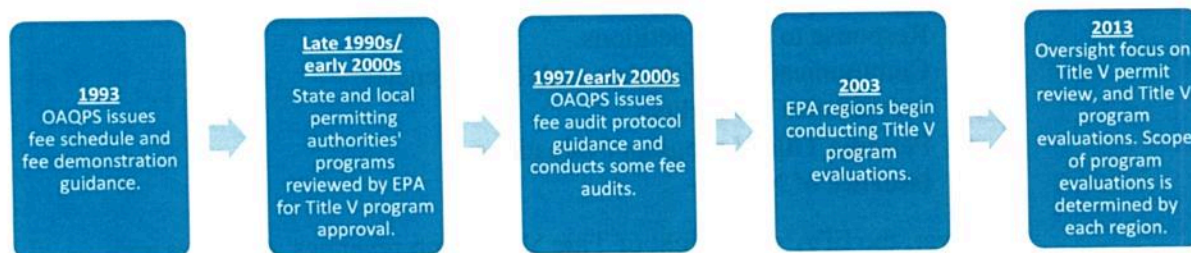
- General principles.
- Activities expected to be funded by permit fees.
- Flexibility in fee structure design.
- Initial program approvability criteria.
- Future adjustments to fee schedule.

The fee demonstration guidance provided a general framework for permitting authorities to identify Title V program areas, functions and tasks performed within the permit program, and estimate annual cost. The agency then evaluated Title V revenues, expenses and accounting during review and approval of state and local Title V programs. While the EPA allowed permitting authorities significant flexibility in establishing a fee structure sufficient to cover all reasonable direct and indirect costs of the permit program, the EPA stated in its 1993 fee schedule guidance that states are obligated to update and adjust their fee schedules periodically if they are not sufficient to fund the reasonable direct and indirect costs of the permit program.

EPA regions also conducted independent fee audits of selected permitting authorities in the late 1990s and early 2000s. In 2003, the EPA shifted its oversight emphasis toward Title V program evaluations, and encouraged EPA regions to conduct fee audits on an as-needed basis as part of their Title V program evaluations. In the program evaluations, the EPA evaluated aspects of Title V program implementation and included a limited review of program revenues, expenses and accounting. After the initial round of evaluations, most regions began moving away from the program evaluation guidance and placed less emphasis on evaluating Title V program revenues, expenses and accounting structures. Figure 1 shows how the EPA's Title V oversight has evolved, specifically as it relates to Title V revenues, expenses and accounting.



**Figure 1: Overview of evolution of EPA oversight of Title V revenues, expenses and accounting**



Source: OIG analysis EPA regions' responses to OIG survey.

As of January 2013—nearly 10 years after the agency began conducting Title V program evaluations—the EPA had completed 119 Title V program evaluation reports. These reports, along with other oversight activities conducted by the agency, identified several potential issues related to the sufficiency of Title V revenues, expenses and accounting practices. For example, the EPA issued two NODs to address insufficient Title V fees for permitting authorities and for not adequately ensuring that collected fees are being used solely for Title V costs. One NOD was a result of the agency's Title V program evaluation process. However, as of 2013, one EPA region no longer conducted Title V program evaluations, and most other regions no longer included reviews of Title V revenues, expenses and accounting as part of their program evaluation efforts.

In response to our survey of 10 EPA regions, six EPA regions identified permitting authorities where the region stated it had resolved past Title V fee adequacy or accounting issues with the permitting authorities. Appendix A provides examples where the agency worked with permitting authorities to address Title V revenue, expense and accounting issues.

## **EPA Has Not Consistently Identified and Obtained Corrective Actions for Title V Revenue and Accounting Issues**

For the nine permitting authorities we reviewed, the EPA had not consistently identified or obtained corrective actions for issues related to sufficiency of Title V revenues or the inappropriate use of non-Title V revenues. We asked all 10 EPA regions to identify any permitting authorities in their region that were not collecting sufficient Title V revenues to cover Title V program costs. None of the EPA's 10 regional offices identified any permitting authorities that were not collecting sufficient Title V revenues.<sup>11</sup> However, through our survey, we found

<sup>11</sup> EPA Region 2 noted in response to our draft report that, at the time of OIG's survey, the region had anticipated there may have been revenue sufficiency problems at the New York State Department of Environmental Conservation. However, the region had to wait until its 2014 program evaluation to fully evaluate the effects of New



that annual Title V revenues were not sufficient to cover annual Title V expenses 62 percent of the time (28 out of 45 observations) from 2008 to 2012. Further, four of the nine permitting authorities used non-Title V revenues<sup>12</sup> to support their Title V programs. In our view, the fact that the agency did not identify these types of fee sufficiency issues indicates a significant weakness in the agency's oversight process.

### ***Significant Concerns Regarding the Sufficiency of Title V Revenue***

In our 2012 survey of EPA regions, we asked them to identify any permitting authorities in their region that were not:

- Properly using Title V revenues solely to cover Title V program costs.
- Collecting sufficient Title V fees to cover Title V program costs.

Region 6 was the only region that identified a permitting authority (Louisiana) that may not have been properly using Title V revenues solely to cover Title V costs. In response to our survey, no regions identified any permitting authorities that were not collecting sufficient Title V revenues to cover program costs. Also, OAQPS personnel told us they were not aware of any permitting authorities where Title V fees were a problem. However, this was not consistent with the information we obtained from the permitting authorities we surveyed. In our view, this is an indication of weaknesses, or gaps in information, in the agency's oversight.

Our survey of permitting authorities indicated that annual Title V revenues have struggled to keep pace with Title V program costs in recent years. We found a general decline in annual Title V revenues and expenditures from 2008 through 2012 in both the combined data and across individual permitting authorities. Permitting authorities can draw down surpluses of Title V revenues carried over from previous years in the event a given year's Title V costs exceed revenues. However, the frequency of occurrences in our sample in which annual Title V costs exceeded annual Title V revenues (62 percent) is a condition that EPA should closely monitor.

We combined all the Title V revenue data and, separately, combined all the Title V program cost data for the nine permitting authorities in our sample. As Table 2 shows, the combined Title V revenues for the permitting authorities we sampled covered about 90 percent of the combined Title V program costs.

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York's 2009 Title V fee increase. Region 2's oversight of New York's Title V fees is discussed in more detail in Appendix B.

<sup>12</sup> 40 CFR Part 70 requires Title V owners or operators to pay fees sufficient to cover Title V program costs. It also requires that these fees be used solely for permit program costs. Based on this requirement, we considered any fees paid by sources other than Title V sources—and any fees not used solely for Title V costs—to be non-Title V fees.

**Table 2: Combined Title V revenues and costs between 2008 and 2012 for nine permitting authorities surveyed.**

<b>Year</b>	<b>Combined Title V revenues</b>	<b>Combined Title V expenses</b>	<b>Percentage of combined Title V costs covered by combined Title V revenues</b>
<b>2008</b>	\$124,913,654	\$133,679,424	93%
<b>2009</b>	123,846,127	139,602,911	89%
<b>2010</b>	120,008,313	137,171,710	87%
<b>2011</b>	112,629,524	135,220,507	83%
<b>2012</b>	121,938,646	126,646,390	96%
<b>Total</b>	<b>\$603,336,264</b>	<b>\$672,320,942</b>	<b>90%</b>

Source: OIG analysis of permitting authorities' responses to OIG survey.

The percentage of total Title V costs covered by total Title V revenues at the permitting authorities we surveyed declined 10 percent between 2008 and 2011 (from 93 percent to 83 percent), rebounding up to 96 percent in 2012. However, in 2012, the combined annual Title V revenue and percentage of combined costs covered by combined revenues both increased.

The trend reversal from 2008–2011 to 2012 was largely accounted for by changes in fee revenue seen at the Texas Commission on Environmental Quality. The Texas change resulted in an increase in 2012 of more than \$9 million in combined Title V revenue shown in Table 2 compared to 2011 revenue. Further, the percentage of 2012 combined Title V costs covered by combined Title V revenue was improved by a reduction in the combined 2012 Title V costs for the permitting authorities by about 6 percent from the 2011 combined total. This may be due to permitting authorities' reductions in staffing. Six of nine permitting authorities we surveyed had experienced reductions in full-time equivalents over the past 5 years.

When breaking out the annual revenue and expense data to the individual permitting authorities, we found that annual Title V revenues were not sufficient to cover all annual Title V expenses 62 percent of the time from 2008 through 2012. The majority of these instances occurred in four permitting authorities:

- Illinois Environmental Protection Agency (Illinois EPA).
- Louisiana Department of Environmental Quality (Louisiana DEQ).
- New York State Department of Environmental Conservation (New York State DEC).
- Pennsylvania Department of Environmental Protection (Pennsylvania DEP).

The data for these four authorities showed that:

- These authorities represented over two thirds of the instances (19 of 28) where permitting authorities did not generate sufficient annual Title V revenues to cover annual Title V costs.



- Annual Title V revenues were not sufficient to cover annual Title V expenses 95 percent of the time from 2008 to 2012 for these authorities.
- Three of the authorities (Illinois EPA, Louisiana DEQ and New York State DEC) did not have sufficient annual Title V revenues to cover annual Title V costs in any of the 5 years from 2008 to 2012.

In addition, Title V expenses for the Indiana Department of Environmental Management (Indiana DEM) exceeded Title V revenues for 3 of the 5 years.

Conversely, four of nine permitting authorities reported annual Title V revenues sufficient to cover annual Title V expenses a majority of the time between 2008 and 2012. These four permitting authorities were:

- Florida Department of Environmental Protection (Florida DEP).
- South Coast Air Quality Management District (South Coast AQMD).
- Ohio Environmental Protection Agency (Ohio EPA).
- Texas Commission on Environmental Quality (Texas CEQ).

Annual Title V revenues exceeded Title V expenses for:

- Four of 5 years (80 percent) at Florida DEP and South Coast AQMD.
- Three of 5 years (60 percent) at Ohio EPA and Texas CEQ.

Table 3 summarizes the frequency of observances from 2008 to 2012 where annual Title V expenses exceeded annual revenues for the nine permitting authorities surveyed.

**Table 3: Frequency of occurrences in which annual Title V expenses exceeded annual Title V revenues among surveyed permitting authorities (2008–2012)<sup>a</sup>**

Permitting authority	Number of years surveyed (2008–2012)	Number of years surveyed that annual Title V expenses exceeded annual Title V revenues	Percentage of years surveyed that annual Title V expenses exceeded annual Title V revenues
Florida DEP	5	1	20%
Illinois EPA	5	5	100%
Indiana DEM	5	3	60%
Louisiana DEQ	5	5	100%
New York State DEC	5	5	100%
Ohio EPA	5	2	40%
Pennsylvania DEP	5	4	80%
South Coast AQMD	5	1	20%
Texas CEQ	5	2	40%
<b>Totals</b>	<b>45</b>	<b>28</b>	<b>62%</b>

Source: OIG analysis of permitting authorities' responses to OIG survey.

<sup>a</sup> Appendix D provides figures that include annual Title V revenue and expense amounts for each permitting authority.



Among the permitting authorities we surveyed, seven of nine experienced overall decreases in annual Title V revenues and expenditures from 2008 to 2012. The percentage change in 2012 Title V revenues and expenses (compared to 2008) for each permitting authority in our sample is shown in Table 4.

**Table 4: Percent change in 2012 annual Title V revenues and expenses (compared to 2008) for surveyed permitting authorities**

Permitting authority	Percent change in 2012 Title V revenue from 2008 Title V revenue	Percent change in 2012 Title V expenses from 2008 Title V expenses
Florida DEP	-21%	-14%
Illinois EPA	-13%	-11%
Indiana DEM	-10%	-12%
Louisiana DEQ	-10% <sup>a</sup>	4%
New York State DEC	-16%	-17%
Ohio EPA	-11%	-17%
Pennsylvania DEP	-21%	-3%
South Coast AQMD	134%	167%
Texas CEQ	6%	-8%

Source: OIG analysis of permitting authorities' responses to OIG survey.

Note: Revenue figures for Illinois are computed without consideration for \$2 million in revenue from a sales tax on sorbents that Illinois EPA reported as Title V revenue in 2012.

<sup>a</sup> Revenue figures for Louisiana only include revenue reported by Louisiana DEQ as Title V revenue. As discussed in Appendix C, Louisiana DEQ used non-Title V revenue from its Environmental Trust Fund to cover from \$2.9 million to \$4.1 million of its annual Title V expenditures between 2008 and 2012.

Permitting authorities can draw down surpluses of Title V revenues carried over from previous years in the event a given year's Title V costs exceed Title V revenues. Thus, a Title V revenue deficit for 1 year (or even multiple annual deficits) does not mean that a permitting authority has an inadequate fee structure. However, frequent annual deficits can diminish program account balances built up in previous years. For example, according to New York State DEC personnel, New York's Operating Permit Program account balance was \$3.25 million on April 1, 2008, after unloading expenses to General Fund Appropriations. By the end of 2012, however, the account had a deficit of over \$16 million. Similarly, Pennsylvania DEP reported a Title V account balance of over \$25 million in 2010 but, according to a 2013 Pennsylvania rulemaking, "a deficit of \$7.235 million is projected for the Title V Major Emission Facilities Account by the end of Fiscal Year 2015–2016. Funds sufficient to support the program need to be collected before the fund is in deficit."

As shown in Table 3, three of nine permitting authorities did not have annual Title V revenues sufficient to cover annual program costs at any point during 2008 to 2012. Specifically, from 2008 to 2012:

- Illinois EPA funded about 90 percent of its Title V costs with Title V revenues.
- Louisiana DEQ only funded about 54 percent of its Title V costs with Title V revenues.
- New York State DEC Title V revenues were enough to only support about 56 percent of Title V costs.

Further details on these three permitting authorities are in Appendix B.

This is a trend of concern that signals the need for closer EPA monitoring and review of these permitting authorities' fee structures. The National Association of Clean Air Agencies (NACAA) surveyed state and local Title V programs in August 2011. The results of that survey demonstrate that permitting authorities beyond those we identified may be experiencing Title V revenue shortfalls. Eleven of 32 states (over 34 percent) responded to the NACAA survey that their state permitting authorities did not collect sufficient Title V fees, or other responses in the survey indicated that the fees may have not been sufficient to cover Title V program costs (see Table 5).

**Table 5: Selected results of 2011 NACAA survey on Title V fee sufficiency**

State	Information from NACAA survey indicating Title V revenue was not or may not be sufficient <sup>a</sup>
Illinois	After fees trended downward by about 2 percent a year over the last several years, the state increased its fees.
Iowa	State-reported fees not sufficient; said reductions made to balance budget.
Kentucky	Eliminated 12 positions and made other cuts.
Michigan	Reported insufficient revenue in survey and made reductions in program.
Missouri	Program cut by 19 percent last 3 years.
New Jersey	Collected fees to only fund 50 percent of program.
Ohio	Funded 90 percent of program.
Massachusetts	Fees cover about 65 percent of program; legislature allocated funds to cover shortfall.
Rhode Island	Budget has been cut 13.5 percent from the fiscal year 2009 budget.
Georgia	Fees have gone down and state cut costs.
Virginia	Fees fund about 70 percent of program.

Source: OIG evaluation of NACAA Title V Fees Survey, State by State Results, September 2011

<sup>a</sup>We asked the EPA regions about 12 states that showed indications of fee sufficiency issues per their responses to the 2011 NACAA survey, and we reviewed program evaluations for those states that were completed within the timeframe that the NACAA survey was conducted. EPA regions confirmed that the information provided by six states accurately described the financial situation of the state at the time the NACAA survey was completed, and we were able to confirm the information provided in the NACAA survey for two states through program evaluations. We excluded one state from the table based on additional information provided by EPA Region 9. For the remaining three states, program evaluations had not been completed within the timeframe of the NACAA survey for these states, and the regions responded to our question by addressing the status of the permit backlogs for these states. These three states and their responses to the NACAA survey are included in Table 5.

### ***Some Permitting Authorities Used Non-Title V Revenues to Support Title V Programs***

Three of the nine permitting authorities we surveyed reported using what we believe to be non-Title V revenues to fund their Title V program, and one said they could use such non-Title V revenue for their Title V program. According to



the CAA, only funds collected from 40 CFR Part 70 sources may be used to fund a state's permit program. The CAA also requires that any fee collected under Title V be used solely to cover permit program costs. The amounts of non-Title V revenue used by the permitting authorities we surveyed varied, but ranged up to about \$8 million in a given year. State personnel told us their use of non-Title V revenues was due to political and economic desires to avoid significant fee increases on industry sources. Of the authorities we surveyed, we found that:

- Illinois EPA used up to \$2 million annually from a sales tax on sorbents to fund its Title V expenses.
- Louisiana DEQ used funding from its Environmental Trust Fund, characterized as "Non-Title V Air Revenue," to cover from \$2.9 million to \$4.1 million annually of its Title V expenditures between 2008 and 2012.
- New York State DEC used from \$6.2 million to \$8.3 million annually of non-Title V revenue from 2008 to 2012 to cover Title V program expenses. Personnel said the state uses funds from the state's General Fund and other funding sources to cover annual shortfalls.
- Ohio EPA said it could use revenues from solid waste tipping fees to fund its Title V program if needed.

Details are in Appendix C.

## **EPA's Oversight Is Hampered by Lack of National Strategy and Challenges in Enforcing Part 70 Requirements**

While the agency has worked with permitting authorities in the past to address Title V revenue sufficiency and accounting issues, the agency's lack of emphasis on oversight in recent years creates risks that Title V programs are not properly funded, program funds may be misused and programs may not be well implemented. In our view, the EPA's oversight of Title V programs' revenues and expenses has been hampered by:

- Lack of a national strategy for conducting Title V fee oversight.
- Outdated guidance.
- Lack of financial or accounting expertise among program staff.
- Reluctance by some regions to pursue more stringent corrective actions.

### ***Lack of a National Strategy for Conducting Oversight***

EPA's lack of a national strategy resulted in inadequate oversight of Title V program fees and accounting for some permitting authorities. The results of our survey of the 10 regions indicated that regions conduct oversight of Title V program fees and accounting differently. For example, Region 4 reported that it conducts three program evaluations per year, with each permitting authority with more than 20 sources being covered on a 4-year cycle. In contrast, Region 10 responded that it has not conducted any program evaluations since 2008.



According to Region 10, “Given, in part, that the permitting authorities have demonstrated a good understanding of the Title V fee management requirements, Region 10 has not made Title V program evaluations a priority since 2008.” According to our survey of all 10 EPA regions:

- No regions reported conducting oversight of Title V program revenues, expenses or accounting on a routine basis.
- Four of 10 regions only review Title V program revenues, expenses or accounting as part of periodic program evaluation efforts.
- Five of 10 regions only review Title V revenue, expense or accounting information on a targeted or as-needed basis, or do not review this information at all.
- Four of 10 regions rely on program implementation measures, such as permit backlogs, to determine whether permitting authorities are collecting sufficient Title V revenues to cover all program costs.
- One EPA region (Region 10) stated that it no longer conducts Title V program evaluations.

Further, once EPA regions had conducted initial program evaluations, subsequent program evaluations generally covered issues that regional personnel thought were appropriate. Most regions said they did not continue to use OAQPS’ 2003 program evaluation guidance as a template for their reviews. OAQPS told us that much of its attention has been directed toward reviewing petitions on individual Title V permits and issuing greenhouse gas regulations. As a result, OAQPS has not actively overseen program evaluations conducted by the regions on the state and local permitting programs.

### ***Outdated Guidance***

Only three of the 10 regions stated that they still follow the 2003 OAQPS program evaluation guidance. This guidance included a limited review of program revenues, expenses and accounting. Fee audits were completed by some EPA regions prior to 2004, but only EPA Region 2 reported that it still performs fee audits as part of its Title V program evaluations. In reviewing EPA regions’ Title V program evaluations, we noted that EPA Region 8 included fee audits as part of its Title V program evaluations.

Even in situations where EPA regions included a review of Title V resources in their program evaluations, the frequency of such evaluations varied across EPA regions. For example, although most regions have completed at least one round of program evaluations for its permitting authorities, Region 9 is still in the initial round of program evaluations. The region, which oversees 43 authorities,<sup>13</sup> has yet to complete a program evaluation for three of its permitting authorities, including the South Coast AQMD (one of the authorities in our sample, and the

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<sup>13</sup> A Region 9 manager told us the region focuses its Title V program evaluations on permitting authorities with 20 or more Title V sources located in the authority’s jurisdiction, which was 12 authorities, according to OAQPS.

eighth largest permitting authority in the U.S. based on number of active Title V permits as of June 2012).

OAQPS' 1993 Title V fee schedule and fee demonstration guidance has not been updated in over 20 years. Since issuance of this guidance, EPA regions have raised numerous policy questions. For example, managers in Regions 3, 6 and 9 indicated that the circumstances for which Title V funding can be used for preconstruction permit activities has not been clearly addressed.

In the early 1990s, OAQPS issued Title V program guidance related to fee and revenue oversight, including:

- *August 1993 guidance for fee schedules* – Provided the EPA's interpretation of the list of activities that must be funded with Title V fee revenue, as well as the procedure for demonstrating that fee revenues are adequate to support a permit program.
- *November 1993 Title V Fee Demonstration guidance* – Provided that regardless of the type of fee demonstration a permitting authority elected (either a detailed fee demonstration or adopting the presumptive minimum), all permitting authorities were required to submit an initial accounting of how fee revenues will be used solely to cover the costs of the permitting program. This initial accounting, according to the guidance, should include a description of administrative and accounting controls.

Two of the six regions in our sample told us that OAQPS needs to update and clarify its guidance on accounting and fees.

### ***Lack of Financial or Accounting Expertise Among Program Staff***

Personnel in multiple EPA regions cited a number of “challenges” that impact their ability to perform effective oversight. These included staffs' lack of financial or accounting expertise. Three of the six regions we spoke to reported that they would like access to an expert in the financial and accounting field to assist them with their financial oversight. In our view, the lack of financial or accounting expertise across EPA regions could be addressed by collaborating and sharing financial expertise among the regions.

Region 2 indicated the region does not have a sufficient number of staff to cover each permitting authority in the region. With four permitting authorities in the region—two being in the Caribbean—the region's Title V full-time equivalents can only conduct a program evaluation on a permitting authority once every 4 years. Further, evaluation of the two Caribbean permitting authorities is further hampered by the lack of travel funds.



### ***Reluctance to Pursue More Stringent Corrective Actions***

Some EPA regions expressed a reluctance to take steps toward formally determining whether permitting authorities were meeting 40 CFR Part 70 requirements and then taking action. Personnel in some regions told us they were reluctant to require fee demonstrations due to the potential for such information, once collected, to require formal EPA action, such as issuance of a NOD. A manager in Region 3 told us that the EPA was unlikely to pursue a formal action such as a NOD unless the region believed it would receive cooperation from a permitting authority to address program deficiencies.

Title 42 U.S. Code § 7661a(i)(1) allows the Administrator to make a determination as to whether a permitting authority is adequately administering and enforcing a program. Once the determination is made, certain statutorily mandated consequences, including the issuance of a NOD, follow. However, the decision as to whether to make that determination as an initial matter is a discretionary one.<sup>14</sup> Three court cases have held that while the CAA requires the EPA to issue a NOD when it has determined that a program is not being adequately administered or enforced, this non-discretionary obligation arises only after a discretionary determination by the EPA.<sup>15</sup>

Regional permitting staff told us that it would be difficult for the EPA to take over a permitting authority's Title V program if the permitting authority could not correct the problem within 18 months<sup>16</sup> after an NOD was issued. For example:

- A Region 5 manager told us that issuing a NOD would be an "extreme option," and that his region's preference for correcting problems at a permitting authority would be creating a workplan for the permitting authority, or using other means.
- A Region 3 manager told us that the CAA and Part 70 do not provide interim options for dealing with Title V program deficiencies. The EPA has used several oversight activities to monitor and encourage compliance with Part 70 requirements, but a Region 3 manager told us it was not in the agency's best interest to have a "heavy hand" in dealing with state and local agencies, and that it had generally been her position to defer to the states' and permitting authorities' ability to manage themselves in regard to Title V fee adequacy issues. She said the only real option the EPA has in forcing corrective actions at a permitting authority is to take back the Title V program after issuing a NOD, which this manager said the EPA is not in a position to do.

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<sup>14</sup> *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 330-31 (2d Cir. 2003).

<sup>15</sup> *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 330-31 (2d Cir. 2003); *Public Citizen v. EPA*, 343 F.3d 449, 464 (5th Cir. 2003); *Ohio Public Interest Research Group v. Whitman*, 385 F.3d 792 (6th Cir. 2004).

<sup>16</sup> 42 U.S.C. § 7661a(i)(4); 40 CFR 70.10(b)(4).



- A Region 2 manager told us that he does not believe a NOD would be an effective mechanism for addressing Title V revenue and accounting issues given that the two Region 2 states that are experiencing Title V revenue shortfalls (New York and New Jersey) are already charging a “fairly high fee.” He said that states’ concerns of driving out businesses with even higher fees may prompt states to relinquish their Title V programs to the EPA. According to this manager, his region does not have the resources to take over a Title V program for states the size of New York or New Jersey.

## **Oversight Weaknesses and Downward Trends in Title V Revenues Jeopardize Program Implementation**

The agency’s weakness in identifying and obtaining corrective actions for issues related to Title V revenue sufficiency and accounting practices, coupled with declining resources for some permitting authorities, presents risks to state and local Title V program implementation. These include risks to program quality and a program’s ability to carry out all 40 CFR Part 70 requirements. Seven of nine permitting authorities reported that Title V revenues had declined over the 5-year period from 2008 to 2012, while Title V expenses also declined for seven of the nine permitting authorities over this same period. Appendix D provides Title V revenue and expense trends for permitting authorities we surveyed.

All nine of the permitting authorities we surveyed reported decreasing emissions. For example, the Pennsylvania DEP reported a 50-percent decrease in emissions from 2008 to 2011 (from 1,162,097 to 582,270 tons). New York State DEC reported a 41-percent decrease from 2007 to 2011 (from 232,027 to 137,416 tons). While the trend of decreasing emissions is a positive environmental outcome, we found that the permitting authorities we surveyed relied heavily on such fees to fund their Title V programs. Further, some permitting authorities told us that their workloads had not declined commensurate with the decline in emissions. Reasons given for the decreased emissions included:

- Closure or deactivation of large coal-fired electric generating units.
- The increased availability and low cost of natural gas.
- The installation of air pollution controls.
- The economy.
- Technological advances.
- Permitting requirements.
- Actions taken to comply with regulations.

Some permitting authorities cited reduced emissions as the reason for decreased Title V revenue. Pennsylvania’s DEP staff told us they are projecting a \$4-million cut in Title V revenues by 2016 (from 2012 levels) due to closure of coal-fired power plants. Similarly, Illinois EPA staff said they recently lost several large coal-fired power plants as Title V sources, resulting in a revenue loss of \$294,000 per source.

The trend of decreasing emissions is important to Title V program funding because the majority of permitting authorities have fee structures that rely heavily on emissions. Eight of nine authorities reported to us that the majority of their Title V revenues are from emission fees (all except South Coast AQMD). Such reliance on emissions fees can cause funding issues in some permitting authorities with decreasing emissions, as revenues generated from fees charged per ton of emissions would decrease with emissions. For example, Pennsylvania DEP's 2012 proposal for a revised Title V fee structure is for an \$85-per-ton fee for emissions, up to 4,000 tons annually. However, Pennsylvania DEP staff said that even with an increased base fee rate (to \$85 per ton of emissions, if approved), they are projecting a Title V deficit within 2 to 3 years after the new fee rate is in effect.

An additional factor was the significant number of permitting authorities that did not have automatic fee increases tied to the Consumer Price Index (CPI).<sup>17</sup> The CAA specifies in §7661a(b)(B)(i) that the total amount of fees collected by a permitting authority from sources subject to Title V requirements must not be less than \$25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program. The CAA also requires that the fee calculated under §7661a(b)(B)(i) be increased (consistent with the need to cover the reasonable costs of the permit program) each year by the percentage that the CPI for the most recent year exceeds the CPI for 1989 (42 U.S.C. §7661a(b)(B)(v)). However, five of the nine permitting authorities we surveyed did not adjust their Title V fees according to the CPI.

Continued declines in revenues, and subsequent potential cuts to program expenses, may strain permitting authorities' ability to cover program costs and carry out all required program activities. Permitting authorities reported to us reductions in expenditures for the following types of Title V program activities:

- Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement (two of nine).
- Staff training related to Title V permitting (one of nine).
- Compliance and enforcement-related activities (inspections, audits, issuance of NOVs, etc.) for 40 CFR Part 70 sources (two of nine).
- Emissions and ambient monitoring associated with Title V sources or permits (one of nine).
- Modeling, analysis, or demonstrations associated with Title V sources or permits (one of nine).
- Preparing emission inventories and tracking emissions for Title V sources (one of nine).

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<sup>17</sup> The CPI for any calendar year is the average of the CPI for all urban consumers published by the Department of Labor for the 12-month period ending August 31 of each year.



- Public outreach, notification, public hearings, responses to public comments, and small business assistance related to 40 CFR Part 70 sources (one of nine).

One permitting authority attributed the reduction in its expenditures to efficiency improvements (“right sizing” the organization to conduct more work in less time, with less staff) and others attributed the reductions in expenditures to declining revenues. Permitting authorities also noted the need to shift equipment purchases to non-Title V accounts and make adjustments to indirect rates.

In addition, six of nine permitting authorities reported decreases in staffing, also known as full-time equivalents. Such decreases can negatively impact the permitting authority’s ability to perform all required program functions, including issuing timely permits and conducting site inspections.

Personnel at multiple permitting authorities we interviewed stated that there are political and economic pressures to limit Title V fee increases. The fact that permitting authorities are facing these types of externalities makes the EPA’s role in overseeing Title V fee revenues and expenditures an important one. The agency needs to ensure that such factors are not placing programs at risk of failing to meet 40 CFR Part 70 requirements.

## Conclusions

Permitting authorities are facing declining Title V fee revenues resulting from their reliance on emission-based fee structures, as well as other factors listed above. Improved agency oversight of Title V revenues and accounting is key to successful implementation and performance of state and local Title V programs. Improved EPA oversight should minimize future risks to program performance brought about by inadequate fee revenues and potential future demands on permitting authorities as the EPA moves toward regulation of greenhouse gases. The EPA should take steps to improve its oversight of Title V fee and accounting practices; update its fee guidance; develop an oversight strategy; and take appropriate, timely and direct action when accounting and fee sufficiency problems occur over extended periods without effective corrective actions.

## Recommendations

We recommend that the Assistant Administrator for Air and Radiation:

1. Assess whether the EPA’s 1993 fee schedule guidance sufficiently addresses current program issues and requirements related to how Title V fees should be collected, retained, allocated and used. Revise the fee guidance as necessary and re-issue to EPA regions.



2. Issue guidance requiring EPA regions to periodically obtain and assess authorized state and local permitting authorities' Title V program revenues, expenses and accounting practices to ensure that permitting authorities collect sufficient Title V revenues to cover Title V program costs.
3. Establish a fee oversight strategy, including a hierarchy of actions and related timeframes, to ensure that EPA regions take consistent and timely actions to identify and address violations of 40 CFR Part 70 Title V fee revenues, expenses and accounting practices.
4. Ensure that EPA regions complete program evaluation reports of authorized state and local permitting authorities within a reasonable period of time following the evaluation, and require that EPA regions publicly issue these program evaluation reports.
5. Require that EPA regions periodically emphasize and include reviews of Title V fee revenue and accounting practices in Title V program evaluations.
6. Require that EPA regions address shortfalls in the financial or accounting expertise among regional Title V program staff as the regions update their workforce plans. This may include resource sharing and collaboration with other EPA regions, or use of outside organizations, as appropriate.
7. Require that EPA regions re-assess permitting authority fee structures when revenue sufficiency issues are identified during program evaluations, and require fee demonstrations as necessary.
8. Require that EPA regions take action on permitting authorities not in compliance with 40 CFR Part 70 by finding them to be inadequately administered or enforced, and issuing the required NODs.

## **Agency Comments and OIG Evaluation**

OAR concurred with all recommendations, and provided acceptable planned corrective actions and completion dates for all recommendations, as clarified at the exit conference and in subsequent communications with the OIG. We consider all eight recommendations to be resolved and open, with agreed-to corrective actions pending.

In general, the EPA believes that its commitment to develop and issue a fee oversight strategy guidance document will be an effective response to the OIG's recommendations. We agree that such a document, which incorporates all of the elements addressed by our recommendations, will be responsive to our report's

recommendations. We amended two recommendations based on agency comments and information provided by OAR at the exit conference, as follows:

- We revised Recommendation 4 to require that EPA regions complete program evaluation reports within a reasonable period of time following the evaluation as opposed to requiring that EPA regions complete these reports within the same fiscal year they were conducted.
- We revised Recommendation 5 to require that EPA regions periodically emphasize and include reviews of Title V fee revenue and accounting practices in Title V program evaluations as opposed to requiring that EPA regions review fee revenue and accounting practices as part of every program evaluation they conduct.

OAR also provided detailed comments in an attachment to its response to the draft report. We made revisions to our report to address OAR's detailed comments where appropriate. Appendix E contains OAR's response to our report recommendations, and its proposed corrective actions, as clarified at the exit conference and in subsequent communications with the OIG.

We provided the nine state and local permitting authorities with excerpts of our draft report as it related to each permitting authority for their review and comment. Seven of nine permitting authorities provided comments on the draft report excerpts, and we made revisions to our report to address their comments as appropriate. Two permitting authorities chose not to provide comments.

## Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	23	Assess whether the EPA's 1993 fee schedule guidance sufficiently addresses current program issues and requirements related to how Title V fees should be collected, retained, allocated and used. Revise the fee guidance as necessary and re-issue to EPA regions.	O	Assistant Administrator for Air and Radiation	9/30/17		
2	24	Issue guidance requiring EPA regions to periodically obtain and assess authorized state and local permitting authorities' Title V program revenues, expenses and accounting practices to ensure that permitting authorities collect sufficient Title V revenues to cover Title V program costs.	O	Assistant Administrator for Air and Radiation	9/30/17		
3	24	Establish a fee oversight strategy, including a hierarchy of actions and related timeframes, to ensure that EPA regions take consistent and timely actions to identify and address violations of 40 CFR Part 70 Title V fee revenues, expenses and accounting practices.	O	Assistant Administrator for Air and Radiation	9/30/17		
4	24	Ensure that EPA regions complete program evaluation reports of authorized state and local permitting authorities within a reasonable period of time following the evaluation, and require that EPA regions publicly issue these program evaluation reports.	O	Assistant Administrator for Air and Radiation	9/30/16		
5	24	Require that EPA regions periodically emphasize and include reviews of Title V fee revenue and accounting practices in Title V program evaluations.	O	Assistant Administrator for Air and Radiation	9/30/17		
6	24	Require that EPA regions address shortfalls in the financial or accounting expertise among regional Title V program staff as the regions updates their workforce plans. This may include resource sharing and collaboration with other EPA regions, or use of outside organizations, as appropriate.	O	Assistant Administrator for Air and Radiation	9/30/17		
7	24	Require that EPA regions re-assess permitting authority fee structures when revenue sufficiency issues are identified during program evaluations, and require fee demonstrations as necessary.	O	Assistant Administrator for Air and Radiation	9/30/17		
8	24	Require that EPA regions take action on permitting authorities not in compliance with 40 CFR Part 70 by finding them to be inadequately administered or enforced, and issuing the required NODs.	O	Assistant Administrator for Air and Radiation	9/30/17		

O = Recommendation is open with agreed-to corrective actions pending.

C = Recommendation is closed with all agreed-to actions completed.

U = Recommendation is unresolved with resolution efforts in progress.



## **Examples of EPA Oversight Actions to Address Title V Accounting or Fee Adequacy Issues**

EPA region	Permitting authority	Summary of issue or EPA actions
1	Rhode Island	EPA worked with the state to restore to the proper account Title V fees that were diverted for a short period of time.
	Massachusetts	Early in program EPA identified that fees may become insufficient to fully fund the program. Massachusetts addressed issue by increasing its Title V fees.
2	New Jersey	After initially approving fee structures for each permitting authority based on the presumptive minimum fee rate, EPA found that the initial fee structure for both permitting authorities failed to provide sufficient funding for the Title V program. EPA provided support to New York and New Jersey in the form of letters when new fee legislations were sought from their respective state legislatures.
	New York	
3	Maryland	A 1998 fee audit conducted by EPA found that the permitting authority was spending Title V fee revenues on non-Title V activities. In response, the permitting authority stated that it made adjustments to the administrative structure of its fee program and committed to a fee demonstration.
	District of Columbia	EPA conducted a fee review in 1999 that found (1) the permitting authority's financial management system did not accurately reflect Title V revenues and expenditures; (2) the permitting authority did not bill sources for emission fees, verify annual emission reports submitted by sources, or perform timely follow-up on delinquent accounts receivable; and (3) Title V funds were not accounted for separately in the financial management system.
4	Mississippi	In 2004, the legislature took revenue from the Title V program and placed it the general treasury account. Regional Administrator contacted Mississippi Department of Environmental Quality legislature and informed them Title V monies could only be used for Title V purposes and that the monies had to be replaced. In July 2004, EPA received a letter from Mississippi stating the monies had been returned in full to the Title V account.
	North Carolina	A 2006 accounting error gave the appearance that North Carolina was supplementing Title V revenues with state gas tax monies. Issue was resolved through conference calls with the state program office.
	Florida	In 2007, an unusually high percentage of Title V fees were being distributed to general treasury account for administrative expenses. Region 4 sent out a letter to the permitting authority asking the permitting program to provide any supplemental information to explain why they had such a high percentage set aside for administrative expenses. When EPA received the supplemental information, it was the agency's opinion that the expense was too high and should be eliminated. Subsequent negotiations led to this expense being eliminated from the Florida Title V operating budget and has saved the Title V program over \$500,000 annually.
	Georgia	In 2007, Georgia's program did not have a rollover provision for its Title V account. At end of year, surplus Title V revenue was swept into the general treasury funds account. Region 4 noted this issue in a letter to the permitting authority, and asked what happened to the excess funds from previous years. The region concluded that Georgia was not ensuring Title V revenue was being used solely to cover Title V expenses. EPA negotiated with Georgia to incorporate a rollover provision into their Title V accounting practices.
	Louisville-Metro	In 2009, a permitting authority was billing the Title V account at a percentage much higher than what the region believed was reflective of the amount of Title V work being completed at the permitting authority. Region 4 sent a letter to the permitting authority following the program evaluation asking for supplemental information regarding billing to the Title V account. The permitting authority conducted an internal audit of its work allocation and found that actual work time being billed to the Title V account was much lower than what was being practiced. The permitting authority attributed this to an accounting problem with sick time and vacation codes for personnel working on Title V. The permitting authority made changes to its account coding software and EPA is monitoring the permitting authority's expenses with annual reviews of its budgeting expenses.
5	Wisconsin	Region issued an NOD for Wisconsin in 2004. It was resolved in 2006.
	Michigan	Region 5 requested a fee demonstration in 2009. Michigan passed legislation in October 2011 (first approved fee increase since 2001). Michigan provided updated fee legislation, revised fee sufficiency analysis, and additional program documentation to Region 5. The region is currently reviewing information, but its review is not yet complete.
6	City of Albuquerque	City initiated internal audit of program. As a result, the permitting authority established internal control mechanisms for all purchase actions. A plan was developed to track the purchase and disposition of computer and equipment purchases.
	New Mexico	Accounting issue with tracking year in which Title V fees collected. New accounting system installed that shows fee accruals in the proper fiscal year, as well as specific account receivable payments.
	Louisiana	Identified concerns related to collecting, retaining and allocating fee revenue consistent with 40 CFR 70. After program evaluation in 2008, region requested that Louisiana develop a separate and discrete budget specific to the Title V program to ensure there are adequate funds available to cover fully the Part 70 permitting program. Louisiana committed to provide budget documentation for fiscal year 2009.

Source: Summary of information obtained from EPA regions in response to OIG survey.



## ***Three Permitting Authorities Where Annual Title V Expenses Exceeded Revenues Each Year, 2008–2012***

### **Illinois EPA**

Illinois EPA reported Title V annual costs exceeding annual Title V revenues in each year between 2008 and 2012 (see Table B-1). Over the 5-year period, Illinois EPA reported that it funded about 90 percent of its Title V costs with Title V revenues. However, these figures overstate the portion of Title V costs that Illinois is funding with Title V revenue. According to Illinois EPA, beginning on July 1, 2011, the permitting authority received and used up to \$2 million annually from a sales tax on sorbents<sup>18</sup> sold in Illinois. The use of this sorbents tax to fund Title V activities was authorized by state regulation that became effective July 1, 2011. This fee is not part of the Title V fee structure approved by the EPA for Illinois EPA. We considered this fee to be non-Title V revenue because it is not used solely to cover Title V program costs.

Region 5 was not aware of the change in Illinois fee structure to include the sorbent tax. When asked, Region 5 declined to comment on whether use of this tax is an appropriate source of Title V revenue until they obtained more information about Illinois's use of fees from the sorbent tax. The annual Title V revenue and expense information for Illinois EPA is presented in Table B-1, including the sorbent sales tax funding Illinois EPA reported to us as Title V revenue.

**Table B-1: Annual Title V revenues and expenses reported by Illinois EPA**

Illinois EPA			
Year	Revenue	Expense	% of expense covered by revenue
2008	\$15,468,800	\$17,926,900	86.29%
2009	14,574,900	16,882,100	86.33%
2010	15,624,700	17,145,400	91.13%
2011	14,680,900	16,320,300	89.95%
2012	15,511,500 <sup>a</sup>	15,969,800	97.13%
Total	\$75,860,800	\$84,244,500	90.05%

Source: OIG analysis of Illinois EPA's response to OIG survey.

<sup>a</sup> Includes \$2 million from a sales tax on sorbents.

Illinois EPA's reported 2012 Title V revenues were approximately the same as its 2008 revenues, while 2012 Title V expenses declined about 11 percent from 2008 levels. Effective January 1, 2012, Illinois EPA raised its emissions fee to \$21.50 per ton from \$18.00 per ton, and increased the maximum fee that can be charged to a source from \$250,000 to \$294,000.

<sup>18</sup> According to Illinois EPA, the sorbent is an activated carbon emission control technology used primarily in coal-fired power plants with mercury control systems. The tax is a sales tax collected on sorbent purchases. Illinois EPA personnel told us they believe the sorbents are only purchased by major sources, primarily coal-fired power plants.

However, without the \$2 million in 2012 revenue from the sales tax on sorbents, Illinois EPA's 2012 Title V revenue would have declined 13 percent from 2008 levels. It would cover about 85 percent of Title V program costs in 2012.

In 2008 and 2009, Illinois EPA's annual Title V revenues covered 86 percent of annual Title V costs. However, since Illinois in 2011 increased Title V emission fees and enacted regulations that allowed a portion of sales tax on sorbents to be reallocated toward funding Illinois EPA's Title V program, the reported percentage of annual Title V costs covered by annual Title V revenues increased to 97 percent in 2012.

Illinois EPA's Title V program has one of the nation's largest backlogs of Title V permits and permit renewals. According to the EPA's Title V Operating Permits System, Illinois EPA's Title V program has approximately 20 percent of the nation's outstanding initial Part 70 applications. Illinois EPA's Title V program also accounted for approximately 17 percent of the nation's active sources with expired permits. Expired permits are those for which a renewal permit has not been issued by the permitting authority, and the source has not submitted an application for renewal or has not provided timely and accurate information. Illinois EPA officials reported that revenue issues had an impact on their permit issuance and permit backlog. However, they noted that they have hired and trained staff to work on permits.

Although Region 5 has actively worked with Illinois on implementing its Title V program, the region has not focused on oversight of Illinois' Title V revenues, expenses or accounting. According to Region 5's response to our survey, several petitioners filed a petition with the EPA in March 2003 seeking a NOD for Illinois EPA's failure to administer the Title V program. The petition raised issues regarding Illinois' permit issuance rates. It also questioned the state's Title V enforcement and fee sufficiency. Region 5 has not formally responded to the petitioners on the 2003 petition and the petition is reported as pending in the EPA's petition database. In 2012, several petitioners filed an amended petition regarding Illinois' Title V program. They again cited Title V revenue and permit backlog issues. The petitioners requested that Region 5 require Illinois EPA to conduct a Title V fee demonstration. Region 5 told us that it had not requested nor received a fee sufficiency demonstration from Illinois.

EPA Region 5 conducted evaluations of Illinois EPA's Title V program in 2006 and 2010. The region did not identify any issues related to Title V revenue sufficiency or accounting in either evaluation report.

Region 5 told us that it is engaged in a broader oversight effort on Illinois' Title V program. The region said this broader effort is designed to improve permit issuance rates, reduce the state's Title V permit backlog, and improve the enforceability of permits in the state. Region 5 has established a joint workplan with Illinois EPA to address the state's Title V permit backlog. The region told us that fee increases will help in this effort by bringing additional resources into the state's Title V program. However, they said the region does not believe that fees alone are the root cause of the issues. Region 5 cited several reasons that contributed to the Illinois Title V backlog, including staff turnover at Illinois EPA, a statewide hiring freeze, and a cumbersome appeal process. The region stated that it has not focused its attention on fees or fee demonstrations.



## New York State DEC

According to data we obtained from the New York State DEC, it funded about 56 percent of its total Title V program costs from 2008 to 2012 with Title V fee revenue (see Table B-2). By 2012, the New York State DEC program had reached a cumulative Operating Permit Program account deficit of over \$16 million.

**Table B-2: Annual Title V revenues and expenses reported by New York State DEC**

New York State DEC			
Year	Revenue	Expense <sup>a</sup>	% of expense covered by revenue
2008	\$9,455,256	\$17,760,000	53.24%
2009	10,903,197	18,466,000	59.04%
2010	9,404,481	17,405,000	54.03%
2011	8,606,317	14,894,000	57.78%
2012	7,931,334	14,763,000	53.72%
<b>Total</b>	<b>\$46,300,585</b>	<b>\$83,288,000</b>	<b>55.59%</b>

Source: OIG analysis of New York State DEC response to OIG survey.

<sup>a</sup> Expenses include New York State DEC, Environmental Facilities Corp., Department of Health and Empire State Development.

EPA Region 2 has worked with New York to address Title V fee sufficiency issues. However, the EPA's oversight and New York's corrective actions have not been able to keep pace with New York's Title V revenue sufficiency problems. According to the EPA, during fee audits in 1999, Region 2 discovered that New York's actual fees collected were less than their initial projection. The issue required state legislative actions to resolve. Region 2 communicated with New York State DEC program personnel via telephone conferences, email and letters to support the permitting authority's request to the state legislature for authority to increase Title V fees. However, despite the efforts by EPA Region 2, New York has not increased its Title V fees enough to sufficiently fund the program.

A 2006 EPA program evaluation report of New York's Title V program again raised questions about the program's Title V revenue sufficiency. The report stated that:

EPA recognizes a need for some level of action to address the apparently widening gap between actual revenue and revenue needed to fully support the program.

Region 2 requested a detailed accounting from New York's permitting authority to demonstrate that its fee schedule met the requirements of 40 CFR Part 70.9(b)(1). According to Region 2 personnel, the detailed accounting was provided to the EPA in the form of an Operating Permit Program Annual Report. It included details on program revenues and expenses.

In 2008, EPA Region 2 wrote a letter to the Chairmen of the New York State Senate Finance Committee and the New York State Assembly Ways and Means Committee supporting additional fees for New York State DEC's Title V program. Region 2 personnel stated that the New York state legislature then raised its Title V fees in 2009. They said this was done partly

due to the EPA's involvement. The EPA conducted a Title V program evaluation in 2010. However, a comprehensive fee program review was not part of that evaluation. In its 2010 evaluation report, the EPA stated that:

...we were encouraged that the NYSDEC was recently able to work to increase the State of New York's Title V fees and, as such, have determined that a full fee audit should wait until several cycles have passed.

Based on our review of data included in New York's legislation, between 2010 and 2012, New York's Operating Permit Program account balance has gone from an account deficit of about \$6.5 million in 2010 to a deficit of over \$16 million by the end of 2012. New York's Operating Permit Program account deficit grew nearly 150 percent after the EPA had supported a fee increase in its 2008 letter. According to New York State DEC personnel, the revenue shortfall is primarily a combination of reduced emissions generating less revenue and increased agency costs, primarily associated with increases in staff salaries and fringe benefit costs. EPA Region 2 personnel told us they are scheduled to conduct another program evaluation of New York's Title V program in 2014.

## Louisiana DEQ

In response to our survey, Louisiana DEQ reported annual Title V revenues significantly below annual Title V costs each year from 2008 to 2012. Louisiana DEQ's annual Title V revenues ranged from 49 to 60 percent of annual Title V costs. Louisiana DEQ funded 54 percent of total Title V costs with Title V revenue over the 5-year period. Also, while Louisiana DEQ's Title V revenue declined by about 10 percent over the 5-year period, its annual Title V expenses increased by about 4 percent. Table B-3 shows Louisiana DEQ's Title V revenues and expenses between 2008 and 2012.

**Table B-3: Annual Title V revenues and expenses reported by Louisiana DEQ**

Louisiana DEQ			
Year	Revenue	Expense	% of expense covered by revenue
2008	\$4,290,966	\$7,150,474	60.01%
2009	4,292,268	7,813,902	54.93%
2010	4,392,472	8,462,470	51.91%
2011	3,928,328	7,974,306	49.26%
2012	3,879,981	7,417,909	52.31%
<b>Total</b>	<b>\$20,784,015</b>	<b>\$38,819,061</b>	<b>53.54%</b>

Source: OIG analysis of Louisiana DEQ response to OIG survey.

In our survey, Louisiana DEQ reported that 100 percent of its Title V fees are emission fees. However, in subsequent follow-up discussions, they said Louisiana DEQ funds its Title V program through a combination of other fees. These include permit application fees and annual maintenance fees. However, the other revenue Louisiana DEQ uses to fund its Title V program were characterized by Louisiana DEQ as "Paid with Non-Title V Air Revenue." Louisiana DEQ's and other permitting authorities' use of non-Title V revenue to fund a portion of their Title V programs is discussed further in Appendix C.



## ***Four Permitting Authorities' Use of Non-Title V Revenues to Support Title V Programs, 2008–2012***

### **Illinois EPA**

Illinois EPA used up to \$2 million annually from a sales tax on sorbents to fund its Title V expenses. This represented about 13 percent of the permitting authority's Title V revenue in 2012. Illinois EPA staff told us they believe that only major sources subject to Title V are purchasing the sorbents. Thus, Title V sources are paying this "fee" in the form of a sales tax. The Manager of Illinois EPA's Division of Air Pollution Control in the Bureau of Air estimated that the state collected \$4 million to \$5 million from its sales tax on sorbents in 2012. He also said that about \$2 million was used to fund the Title V program. According to Illinois EPA personnel, the decision to allocate a portion of the sales tax on sorbents to its Title V program was made to limit the amount of the state's emission fee increase on sources in 2011.

Although Part 70 requires that any fee will be used solely for Title V permit program costs, only a portion of Illinois' sales tax on sorbents in 2012 was provided to the state's Title V program. When we asked EPA Region 5 if they considered Illinois' use of sales tax on sorbents to be an appropriate form of Title V revenue or if they had approved its use, they stated that "Region 5 does not have any information on Illinois using sales tax on sorbents for the Title V program."

### **New York State DEC**

New York State DEC used from \$6.2 million to \$8.3 million annually of non-Title V revenue from 2008 to 2012 to cover Title V program expenses. According to New York State DEC personnel, the state uses funds from the state's General Fund and other funding sources to cover annual shortfalls. Our review of New York's Title V regulation revisions in 2008, 2010 and 2012 (as well as information provided to us by New York State DEC) showed that, despite increasing its fee structure in 2009, the New York Title V program deficit has grown from a balance of \$3.25 million in 2008 to a negative balance of over \$16 million by the end of 2012. New York State DEC personnel told us that a "structural problem" in the account existed in 2008, and that the account balance only appeared to be positive in 2008 after unloading expenses to General Fund Appropriations.

Personnel at New York State DEC indicated that political and economic factors were reasons for why the state legislature was not likely to increase Title V fees in the near future. New York State DEC personnel told us that the executive level of state government has so far ensured that the New York State DEC's Title V program receives sufficient funding to cover its expenses, even if part of the funding is not from Title V fee revenues. New York State DEC's use of non-Title V revenue to pay for its Title V program essentially amounts to a subsidy from the state's General Fund to cover costs that are required by the CAA and Part 70 to be covered through fees charged to Title V major stationary sources. Therefore, it appears that the New York State DEC



will continue to rely on using non-Title V funds to pay for a significant, and potentially growing, portion of its Title V program.

## Louisiana DEQ

Louisiana DEQ used non-Title V revenue from its Environmental Trust Fund, characterized as “Non-Title V Air Revenue,” to cover from \$2.9 million to \$4.1 million annually of its Title V expenditures between 2008 and 2012. The non-Title V revenues were made up of permit application fees and annual maintenance fees deposited into the permitting authority’s Environmental Trust Fund that were not designated by Louisiana DEQ as Title V revenue. According to Louisiana DEQ, these non-Title V fees may be used to fund Title V expenses. In response to the draft report excerpts, Louisiana DEQ responded that Louisiana uses these fees to meet its requirements of funding the program expenses. Louisiana DEQ further responded:

The fees are from Title V facilities; however, those funding sources are not considered Title V revenue for reporting purposes since Louisiana uses its emission fees as its dedicated revenue source for Title V reporting purposes.

As noted in Chapter 2, the CAA requires that any fee required under Title V be used solely to cover permit program costs.

EPA Region 6 conducted program reviews of Louisiana DEQ in 2002, 2007 through 2008, and 2011 through 2013. However, EPA Region 6 has only issued one final report, for the 2002 evaluation. Region 6 did not issue a final report for the 2007 evaluation. Instead, Region 6 sent a draft report to the Louisiana DEQ in January 2014 for the evaluation it conducted in 2011 through 2013. In response to our October 2012 survey of regions, Region 6 responded that:

Based upon EPA review and evaluation, EPA Region 6 identified a serious concern that the State is failing to collect, retain, or allocate fee revenue consistent with 40 C.F.R., Part 70 [in its 2002 evaluation]. We discussed the serious concern with the State. The LDEQ has committed to steps to address the concerns regarding collection, retention, and allocation of fee revenue system, the budget, and adequacy of fee.” In addition, the Region conducted a Title V evaluation in 2007 thru 2008. Although that report was not finalized, Region 6 is building off the 2008 findings for the currently ongoing 2012 Audit. One of the serious concerns identified in 2008 was LDEQ’s failure to develop a separate and discrete budget specific to the Title V program to ensure there are adequate funds available to cover fully the Part 70 permitting program.

In the draft report that was provided to the OIG in January 2014, Region 6 recommended that the Louisiana DEQ conduct a fee demonstration. According to the draft report:

Through this review, we [Region 6] find that there are ongoing questions regarding whether the initial program approval fee demonstration with the numerous changes to the fees collected and allocated to the current Title V program accurately reflect and fully support the costs of the program. This

uncertainty, coupled with the continued negative divergence of the direct Title V fees collected versus the CPI adjusted presumptive minimum fee render a new fee demonstration in accordance with the requirements of 40 CFR §70.9(b)(5)(ii) both relevant and recommended as part of EPA's oversight responsibility of the Title V program.

According to Region 6, a final report will be prepared once Region 6 obtains feedback from Louisiana DEQ. That feedback is expected by the end of fiscal year 2014.

## Ohio EPA

Ohio EPA charges Title V fees based on the federal presumptive minimum fee level. However, this fee structure, according to Ohio EPA personnel, is unlikely to remain adequate to support Ohio's Title V program. Ohio EPA's 2012 Title V revenues were 11 percent less than 2008 revenues. This occurred despite annual fee increases.

The pressures that declining Title V revenues have placed on Ohio EPA to fund existing full-time equivalent levels, or replace staff after leaving, has caused it to look for other sources of revenue for its Title V program. One source cited by Ohio EPA is revenue from the state's solid waste tipping fees. These are fees charged per ton for disposal of solid waste at Ohio's landfills. The tipping fees are collected from any entity disposing waste in Ohio's landfills. This includes numerous non-Title V sources, as well as members of the public. However, EPA's 1993 guidance for approval of state Title V fee schedules states that:

Only funds collected from part 70 sources may be used to fund a State's title V permits program. Legislative appropriations, other funding mechanisms such as vehicle license fees, and section 105 funds cannot be used to fund these activities.

According to Ohio EPA, revenues from solid waste tipping fees are used to supplement any of Ohio EPA's programs needing funds in a given year. The revenue from tipping fees has been used to fund activities in the air program. The Ohio EPA's Chief of the Division of Air Pollution Control and the Division of Air Pollution Control's Fiscal Officer told us that revenue from solid waste tipping fees has not been used to supplement their Title V funding and has not been used to directly fund Title V activities. However, they said that there are not any state limitations on using tipping fees as a source of revenue to support their Title V program if needed and available.

EPA Region 5 told us that Ohio EPA had expressed concerns that its presumptive minimum fee has not been adjusted (other than annual CPI adjustments) since inception of the program. Region 5 also raised concerns that Title V funding has been adversely impacted in Ohio as large utilities have shut down in response to additional federal regulation.

In its response to the OIG's survey, Region 5 stated that Ohio EPA had "...a number of funds to support Title V activities (e.g., solid waste tipping fees) in the event that a shortfall occurs in any given fiscal year," but did not state that solid waste tipping fees were being used to fund the Ohio EPA Title V program. We asked Region 5 in December 2013 whether it was aware of Ohio's

potential use of solid waste tipping fees to pay for Title V activities, and whether the region had approved use of those fees as an allowed source of Title V revenue. The region responded by stating that:

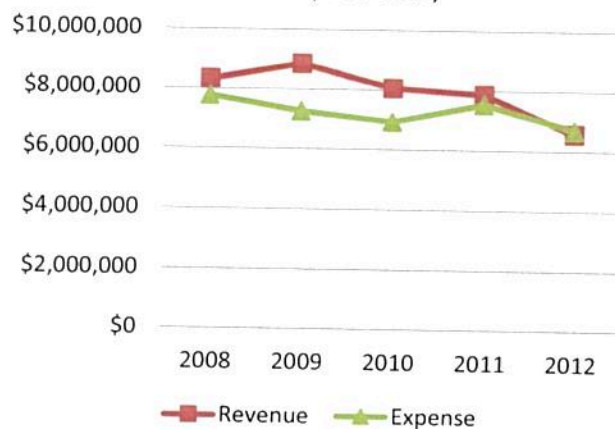
Region 5 has no information indicating that Ohio is using Title V solid waste tipping fees to pay for Title V activities. We also have no information indicating changes to Ohio's program fee structure.

According to Region 5 personnel, Ohio EPA's use of solid waste tipping fees to pay for its Title V program did not come up in the region's most recent Title V program evaluation because the evaluation did not address fees.



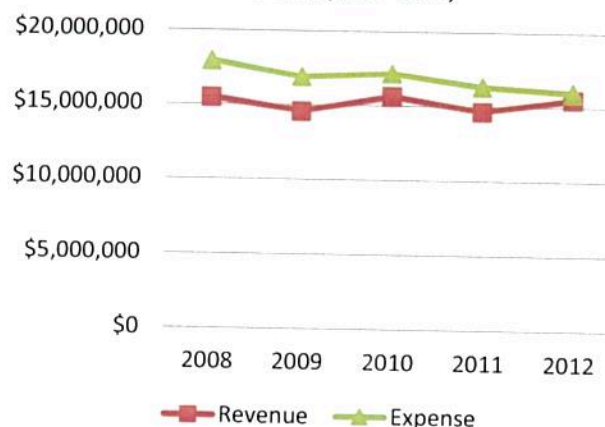
## ***Revenue and Expense Trends Between 2008 and 2012 at Permitting Authorities Sampled***

**Figure D-1: Annual Title V Revenues and Expenses  
for Florida DEP (2008–2012)**



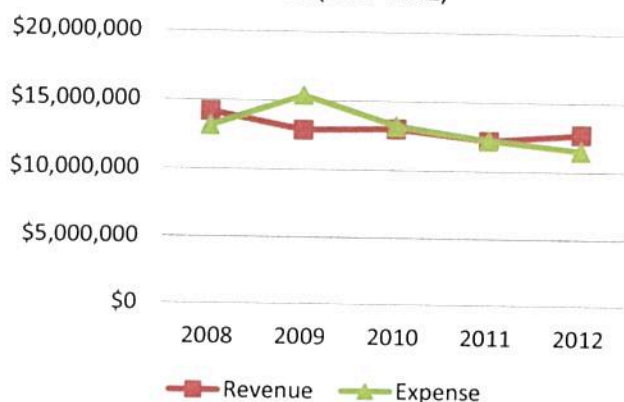
Source: OIG analysis of Florida DEP response to OIG survey.

**Figure D-2: Annual Title V Revenues and Expenses  
for Illinois EPA (2008–2012)**



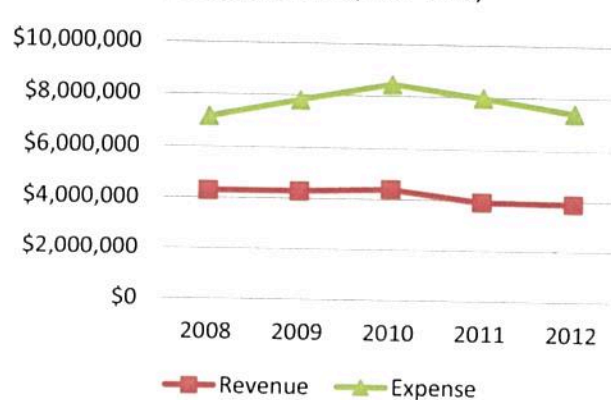
Source: OIG analysis of Illinois EPA response to OIG survey.

**Figure D-3: Annual Title V Revenues and Expenses  
for Indiana DEM (2008–2012)**



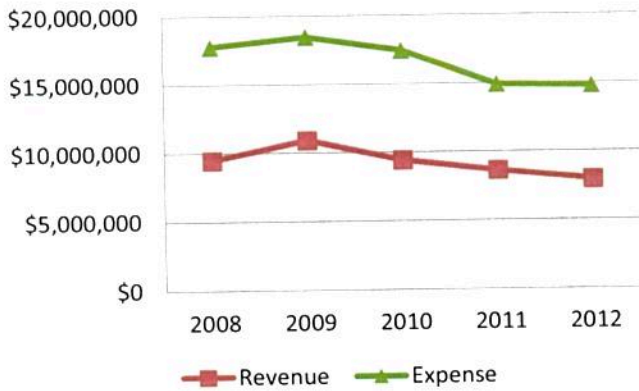
Source: OIG analysis of Indiana DEM response to OIG survey.

**Figure D-4: Annual Title V Revenues and Expenses  
for Louisiana DEQ (2008–2012)**



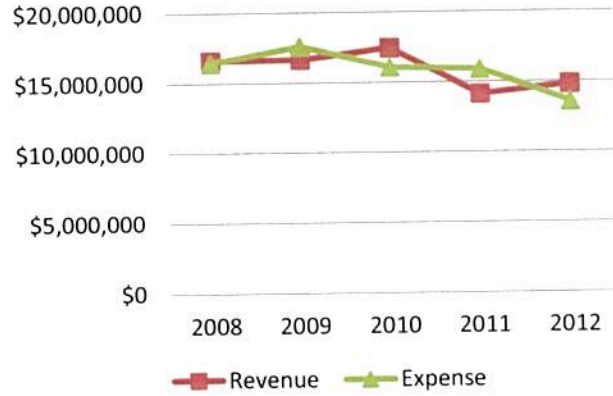
Source: OIG analysis of Louisiana DEQ response to OIG survey.

**Figure D-5: Annual Title V Revenues and Expenses for New York State DEC (2008–2012)**



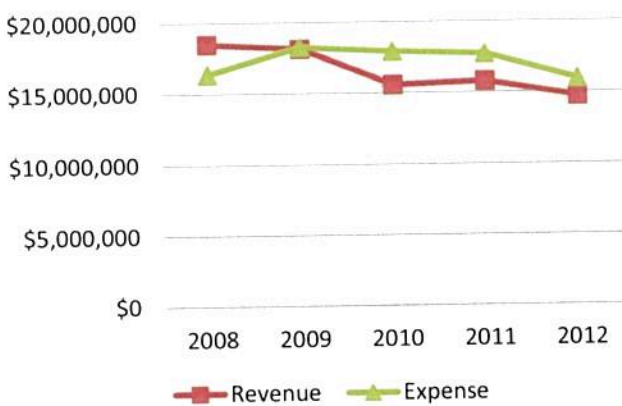
Source: OIG analysis of New York State DEC response to OIG survey.

**Figure D-6: Annual Title V Revenues and Expenses for Ohio EPA (2008–2012)**



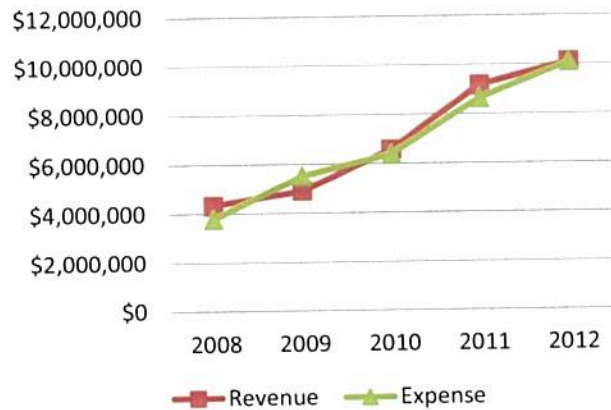
Source: OIG analysis of Ohio EPA response to OIG survey.

**Figure D-7: Annual Title V Revenues and Expenses for Pennsylvania DEP (2008–2012)**



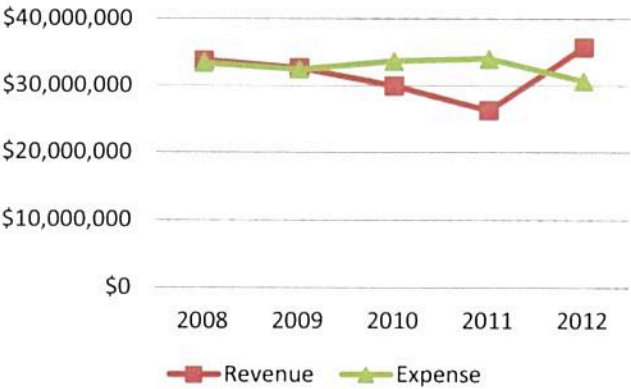
Source: OIG analysis of Pennsylvania DEP response to OIG survey.

**Figure D-8: Annual Title V Revenues and Expenses for South Coast AQMD (2008–2012)**



Source: OIG analysis of South Coast AQMD response to OIG survey.

**Figure D-9: Annual Title V Revenues and Expenses for Texas CEQ (2008–2012)**



Source: OIG analysis of Texas CEQ response to OIG survey.



## ***Agency Response to Draft Report***

August 22, 2014

### **MEMORANDUM**

**SUBJECT:** Response to Office of Inspector General (OIG) Draft Report No. OPE-FY12-0009  
“Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air  
Act Title V Revenues,” dated July 22, 2014

**FROM:** Janet G. McCabe  
Acting Assistant Administrator

**TO:** Carolyn Copper  
Assistant Inspector General  
Office of Inspector General

Thank you for the opportunity to review and comment on the Office of Inspector General’s (OIG’s) draft report titled, “*Enhanced EPA Oversight Needed to Address Risks from Declining Clean Air Act Title V Revenues*” (Project No. OPE-FY12-0009) (Draft Report). The OIG has identified some issues regarding the EPA’s oversight of fee programs implemented by EPA-approved operating permit programs and we respond to those in this memo. We also want to emphasize, however, that EPA’s oversight has been successful in addressing fee program concerns that have arisen over time. Moreover, fee oversight is only one aspect of the EPA’s oversight of the complex state operating permit programs, which have been successful in issuing over 15,000 operating permits, furthering the overarching goals of improving compliance with air pollution requirements and public involvement in the permitting process.

Over the last two decades, the EPA has provided useful and relevant guidance to implementing authorities and regions to ensure proper administration and oversight, respectively, of fee programs for the operating permits programs. For example, the 1993 OAR guidance on operating permit program fees addressed, among other things: the state legal authority necessary to implement required program elements, including fee programs; the specific state permitting activities that are required to be covered by permit fee revenue; the requirement that states charge permit fees that are sufficient to fund the reasonable direct and indirect permit program costs; the requirement that fees be used solely to cover permit program costs (which is sometimes referred to as the ban on using non-title V funds to cover program costs); the option for states to rely on the statutory presumptive minimum fee for purposes of determining adequate funding levels; the flexibility available to states to charge permit fees to sources on different bases, including for emissions-based fees, service-based fees and other types of fees; a program evaluation (audit) checklist for the EPA regions to use when auditing state operating permit programs, which included items related to fee program administration; the interplay between state grants under the Clean Air Act (CAA) Section 105 and title V fees; and program accounting guidance, including title V fund accounting using Generally Accepted Accounting Principles for

government, which addresses accounting fund structures, tracking direct and indirect costs, and segregation of title V funds from other governmental funds.

The CAA and the EPA's title V operating permit rules provide the framework and specific authorities associated with the EPA's oversight of title V permit programs. Through the OAR's National Program Guidance, the EPA regions, which implement key aspects of the EPA's oversight strategy, have committed to undertake one state permit program evaluation per year, which often includes a fee assessment component. Due to the program evaluations and fee assessments conducted so far, each region has historical knowledge of the adequacy of each state's fee revenues, its compliance with various requirements related to fee administration, and of other permit program implementation issues that are unrelated to fees, such as whether the state is timely issuing permits, the quality of the issued permits, and the state's compliance and enforcement program for permits. This knowledge informs regional decisions about when to focus on fees or other issues related to performance as part of their reviews.

Below are the OAR's responses to the OIG's specific recommendations. As a general matter, the EPA agrees that a guidance document that discusses the fee aspect of the oversight program evaluation in additional detail would be useful. The EPA expects to develop such a guidance in part through assessing the 1993 fee schedule guidance and by either updating that document or issuing a separate fee oversight strategy document. This fee oversight strategy guidance is expected to be responsive to the OIG's recommendations below. Lastly, in the attachment, we provide additional detailed comments. We appreciate the changes the OIG made in response to our earlier comments. Several of our suggested clarifications or corrections were not addressed, however, and we urge the OIG to consider those suggestions again, to ensure that the report is as accurate and complete as possible.

**Recommendation 1: "Assess whether the EPA's 1993 fee schedule guidance sufficiently addresses current program issues and requirements related to how Title V fees should be collected, retained, allocated and used. Revise the fee guidance as necessary and re-issue to EPA regions."**

**Response 1:** Although the 1993 fee schedule guidance, and several other existing fee guidances, provide a useful framework for addressing state fee program issues, we agree to assess our existing fee guidance and to re-issue, revise, or supplement such guidance, as necessary. This effort may be completed independently or in conjunction with actions responsive to recommendations below.

**Planned Completion Date:** Fiscal Year (FY) 2017, Quarter (Q) 4

**Recommendation 2: "Issue guidance requiring EPA regions to periodically obtain and assess authorized state and local permitting authorities' Title V program revenues, expenses and accounting practices to ensure that permitting authorities collect sufficient Title V revenues to cover Title V program costs."**

**Response 2:** As noted above, the OAR agrees that revised guidance would be helpful to guide the EPA regional offices in performing fee assessments either as part of or separate from a title V



program evaluation. The OAR intends to develop and issue a guidance document that sets forth a fee oversight strategy. In developing this guidance document, the EPA will consider<sup>19</sup> the scope and frequency of fee assessments and their relationship to the National Program Guidance element that currently provides for each region to conduct at least one title V program evaluation each year.

**Planned Completion Date:** Fiscal Year (FY) 2017, Quarter (Q) 4

**Recommendation 3: “Establish a fee oversight strategy, including a hierarchy of actions and related timeframes, to ensure that EPA regions take consistent and timely actions to identify and address violations of 40 CFR Part 70 Title V fee revenues, expenses and accounting practices.”**

**Response 3:** We commit to working with the regions to develop a guidance document that includes a fee oversight strategy including, for example, a fee review checklist that will provide a framework for the EPA regions to use when performing fee assessments for state permit programs. The CAA and the EPA’s implementing regulations already set forth the specific hierarchy of actions, including certain aspects of that process that are discretionary on the part of the EPA. Nonetheless, the EPA anticipates describing not only methods for performing a fee assessment, but also methods for resolving fee issues that do arise.

**Planned Completion Date:** Fiscal Year (FY) 2017, Quarter (Q) 4

**Recommendation 4: “Ensure that EPA regions complete program evaluation reports of authorized state and local permitting authorities within the fiscal year the evaluation was conducted<sup>20</sup>, as called for by National Program Guidance, and require that EPA regions publicly issue these program evaluation reports.”**

**Response 4:** The OAR agrees that the program evaluation reports should be completed within a reasonable period of time following the evaluation. However, since the evaluations are sometimes completed at the end of the fiscal year, it is not reasonable to always expect that the evaluation report is completed within the same fiscal year as the evaluation. The OAR commits to working with the EPA regions to identify a reasonable timeframe in which to complete the evaluation reports. In addition, the EPA will explore opportunities<sup>21</sup> to provide for public posting on the Internet of the evaluation documents.

**Planned Completion Date:** Fiscal Year (FY) 2016, Quarter (Q) 4

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<sup>19</sup> In a subsequent communication, OAR agreed with substituting the word “address” for “consider” in the sentence to confirm that “...the EPA will address the scope and frequency...”

<sup>20</sup> During the exit conference OIG accepted OAR’s commitment to require regions to complete their program evaluation reports “within a reasonable timeframe” as meeting the intent of our recommendation, and amended the text of Recommendation 4 accordingly.

<sup>21</sup> In a subsequent communication, OAR agreed to revise this sentence to confirm that “EPA will establish a method for public posting on the Internet of the evaluation documents and include such posting as part of the fee oversight strategy guidance we develop.”



**Recommendation 5: “Require that EPA regions emphasize and include reviews of Title V fee revenue and accounting practices in all Title V program evaluations.”<sup>22</sup>”**

**Response 5:** The OAR agrees that fee assessments should be performed periodically as part of the EPA program oversight functions, and the EPA anticipates addressing<sup>23</sup> that as part of the fee oversight guidance document.

**Planned Completion Date:** Fiscal Year (FY) 2017, Quarter (Q) 4

**Recommendation 6: “Require that EPA regions address shortfalls in the financial or accounting expertise among regional Title V program staff as the regions update their workforce plans. This may include resource sharing and collaboration with other EPA regions, or use of outside organizations, as appropriate.”**

**Response 6:** The OAR agrees to develop and issue guidance describing a fee oversight strategy to assist regional staff in conducting title V fee oversight. In addition, the EPA will work with the regions to identify where and how financial and accounting expertise can be accessed when needed.

**Planned Completion Date:** Fiscal Year (FY) 2017, Quarter (Q) 4

**Recommendation 7: “Require that EPA regions re-assess permitting authority fee structures when revenue sufficiency issues are identified during program evaluations, and require fee demonstrations as necessary.”**

**Response 7:** The OAR expects to consider these elements<sup>24</sup> as part of the development and issuance of the fee oversight strategy guidance document described above.

**Planned Completion Date:** Fiscal Year (FY) 2017, Quarter (Q) 4

**Recommendation 8: “Require that EPA regions take action on permitting authorities not in compliance with 40 CFR Part 70 by finding them to be inadequately administered or enforced, and issuing the required NODs.”**

**Response 8:** The CAA and EPA’s implementing regulations set forth the specific hierarchy of actions, including certain aspects of that process that are discretionary on the part of the EPA. The EPA has enforcement discretion under the CAA, and, as identified in Appendix A to the Draft Report, the EPA has successfully resolved numerous issues without actions that the OIG is suggesting that the OAR require of the EPA regional offices. The EPA believes that its

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<sup>22</sup> During the exit conference, we agreed that in lieu of requiring regions to include a review of Title V fee revenue and accounting practices in “all” Title V program evaluations we would accept OAR’s commitment to require regions to include a review of Title V fee revenue and accounting practices periodically at reasonable intervals in its program evaluations.

<sup>23</sup> In a subsequent communication, OAR clarified its proposed corrective action plan to confirm that “... the EPA will address that as part of the fee oversight (strategy guidance) ...”

<sup>24</sup> In a subsequent communication, OAR clarified its response to Recommendation 7 to confirm that “The OAR will address these elements as part of the development and issuance of the fee oversight strategy guidance document described above.”

commitment to develop and issue a fee oversight strategy guidance will be an effective response to these recommendations. The EPA regions have made findings of deficiencies related to fees in the past (described herein) and the OAR believes the EPA regions will do so in the future, when appropriate and necessary to ensure compliance with the CAA.

**Planned Completion Date:** N/A<sup>25</sup>

If you have any questions regarding this response, please contact Anna Marie Wood, Director, Air Quality Policy Division in the Office of Air Quality Planning and Standards at (919) 541-3604.

Attachment

cc: Rick Beusse  
Jeff Herring  
Maureen Hingeley  
Mike Jones  
Mike Koerber  
Vera Kornylak  
Steve Page  
Juan Santiago  
Betsy Shaw  
Paul Versace  
Anna Marie Wood

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<sup>25</sup> In a subsequent communication, OAR confirmed that its planned completion date for its corrective action for Recommendation 8 is Fiscal Year (FY) 2017, Quarter (Q) 4.

## Johnson, Terry

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**From:** Terry, Randy  
**Sent:** Tuesday, July 28, 2015 2:56 PM  
**To:** Cornwell, Eric  
**Cc:** Hofmeister, Art; Porter, Andrew; Johnson, Terry  
**Subject:** RE: list of title V permits to review

Hello Eric,

We expect to arrive tomorrow at 9:00 am. At this time, Art Hofmeister, Andy Porter, and Terry Johnson will be attending the program evaluation with me. We anticipate no more than 2 hours to conduct the interview and then 2 to 3 hours to conduct the file review. We should complete our onsite visit NLT 3:30 pm.

If possible, I would like to receive:

- a copy of your most recent organizational chart and
- a detailed copy of the Ga EPD title V budget and expense report for the most recently completed year.

Thank you.

Randy

**From:** Cornwell, Eric [mailto:Eric.Cornwell@dnr.ga.gov]  
**Sent:** Monday, July 27, 2015 5:34 PM  
**To:** Terry, Randy  
**Subject:** RE: list of title V permits to review

Thanks – they will be ready

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**From:** Terry, Randy [mailto:Terry.Randy@epa.gov]  
**Sent:** Friday, July 24, 2015 3:35 PM  
**To:** Cornwell, Eric  
**Subject:** FW: list of title V permits to review

Hi Eric,

This is a list of all the title V source files we would like to see. Please have available all the documents from the Source file since the last time we conducted an evaluation. Thanks.

If there are any topics we need to discuss with us please send me a list so that we can attempt to have the right people at the meeting. Wednesday.

Randy

**From:** Porter, Andrew  
**Sent:** Friday, July 24, 2015 1:38 PM  
**To:** Terry, Randy  
**Subject:** RE: list of title V permits to review



Terry,

Here is a list of permits for Georgia. Please let me know if I need to do anything else.

2499-025-0005-V-04-0	SEGA Biofuels, LLC
2657-153-0041-V-05-0	Graphic Packaging International – Perry Converting Plant
4953-087-0058-V-02-0	Decatur County Solid Waste Facility
2879-089-0255-V-02-0	Arch Wood Protection, Inc.
3585-157-0057-V-02-0	Toyota Industries Compressor Parts America, Co.
2911-051-0012-V-06-0	Axeon Specialty Products
3585-089-0313-V-04-0	Carlyle Compressor Remanufacturing
4922-051-0263-V-01-0	Elba Liquefaction Terminal
2822-129-0029-V-04-0	OMNOVA Solutions Inc.
4911-171-0014-V-02-0	Piedmont Green Power, LLC.

Thanks,

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Andy Porter  
U.S. EPA Region 4, Air Permits  
(404) 562-9184  
[porter.andrew@epa.gov](mailto:porter.andrew@epa.gov)  
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**From:** Terry, Randy  
**Sent:** Thursday, July 23, 2015 10:22 AM  
**To:** Porter, Andrew  
**Cc:** Ceron, Heather  
**Subject:** list of title V permits to review

Andy,

I need that list from you of the 10 title V permit files for us to review at GA as soon as possible. We try to give them at least a week so they aren't rushed pulling the files for us. If possible get a variety of source types and our last review of their program was in 2011 so don't request any permit sources that haven't been renewed since 2012. Give me a call if you have any additional questions about the permit list. Thanks

Randy

### Summary of Region 4 Title V Fee Issues.

	Florida	Georgia	Mississippi
<b>Primary Issues</b>	Florida has been applying a 7.3% revenue surcharge against all title V monies collected. This has led to a total of 9.4 million dollars being transferred from the Florida title V account into the Florida General Treasury account. Florida has demonstrated no accounting information detailing what the title V monies were spent on once it was deposited into the general treasury account.	Georgia does not have the ability to roll title V funds from one fiscal year into the next. As a result, all title V funds not spent during the fiscal year are swept into the Georgia General Treasury.	Mississippi Legislature withdrew title V monies from the title V account to use for non-title V purposes.
<b>EPA Action</b>	EPA sent a letter to Florida dated September 28, 2007, stating that the surcharge was inappropriate and should be removed from the title V regulations. In addition EPA requested additional information about the transference of title V monies into the Florida General Treasury account and any information detailing how the title V monies were used.	EPA sent a letter to Georgia dated February 7, 2008, stating that a rollover provision is a necessary part of the title V program and requesting additional information about the transference of title V monies into the Georgia General Fund account.	EPA contacted the Mississippi legislature and informed them that using title V monies for non-title V purposes was a violation of the requirements of 40 CFR part 70, and the Clean Air Act.
<b>State Action</b>	Florida sent a detailed response to the EPA inquiry dated February 29, 2008. Within this response Florida explained that it had received an exemption effective October 2007 of the title V funds from the surcharge moving forward and it's rationale behind why the title V funds transferred into the general funds account were legal and acceptable.	Georgia has not sent a response to the EPA request for clarification and additional information on this issue.	Mississippi responded by replacing the title V funds back into the title V account.
<b>Resolution</b>	EPA agrees with the exemption from the surcharge granted to the title V funds.  The resolution of the 9.4 million dollars is To Be Determined	To Be Determined	The title V funds were returned which brought this issue to a close.

\* Florida's surcharge was based on a general state regulation and not title V specific. This surcharge was levied across the board on all revenue generating programs and not exclusive to title V.





## Regional Responses to Title V Fee Questions

Regional Office	Actively evaluating, or have evaluated, their title V programs to ensure adequate collection and appropriate application of title V funds	Has Regional Office encountered any situations in which title V funds were being misappropriated. If so please explain.	If so, how did you resolve the issue? Was the money returned?
I	Yes	<p>Yes</p> <p>In conducting our fee reviews we found that one of our states (Rhode Island) had an available balance at the end of FY 97 that was removed from the title V program and not applied to support the title V program in FY 98.</p>	<p>EPA's letter did not establish a schedule to return the money, however, in response to our letter and follow-up from the Rhode Island Department of Environmental Protection (RIDEM), the general assembly approved a supplemental budget to further support the title V program. This action allowed RIDEM to fully fund its title V program and collect appropriate fees to cover its costs. The process problem that allowed the misappropriation to occur was also fixed at this time, however, the misappropriated funds were not immediately returned. Subsequent to our review, the EPA Inspector General audited Rhode Island's title V fee process and the misappropriation was fully corrected during the state's 2002 budget process</p>
II	Yes	<p>Yes</p> <p><b>Puerto Rico</b> - As a result of a title V audit, EQB was required to prepare a title V corrective action plan to address misappropriating title V fees for fiscal years 1996 through 2004.</p> <p><b>NJ</b> - We will be conducting a title V (including fee) audit of NJ in FY-08. The Financial Management has already been contacted. We think that a similar problem may exist given that they currently are collecting very high fees and are not back filling vacancies or internally promoting staff.</p> <p><b>NY</b> - May not be collecting sufficient fees to run the program.</p>	<p><b>Puerto Rico</b> - it was agreed that EQB must pay back the title V program approximately \$2,000,000.00. They are currently doing this in 3 installments during FY-07 through FY-09.</p> <p><b>NJ/NY</b> - Results pending. NY still awaiting the additional information.</p>

			This finding was a result of the title Audit conducted in FY-06. Additional information is in the process of being requested.	
III	Yes	No		
IV	Yes			
V	Yes	Yes	<p><b>Minnesota</b> has a combined permitting program and as part of our findings, we requested more specific information on how Minnesota collects and allocates its Title V fees.</p> <p><b>Wisconsin</b> - Region 5 requested a fee demonstration from Wisconsin and determined that it wasn't clear whether Wisconsin was commingling or misusing Title V fees.</p>	<p><b>Minnesota</b> - We are still evaluating appropriate next steps regarding the fee issues, but at a minimum plan to follow-up on the fee issue as part of the second round of program evaluations.</p> <p><b>Wisconsin</b> - Region 5 issued a NOD to Wisconsin for failure to demonstrate the adequacy of its fees, in addition to other issues</p>
VI	Yes	Yes	Region 6 found in one of the reviews that a State was not accounting for Title V fees separately.	We worked very hard w/them to get the accounting problems corrected and focused on correcting the accounting problems rather than looking back at how funds were spent. A letter was sent from the RA to the State senior manager outlining what was needed to correct the problems. It also took several follow up calls to insure appropriate accounting practices were implemented. Because Title V fees were not being tracked separately it was not feasible to track exactly what they were used for. We have since completed another review with that State and the previous accounting problems have been corrected.
VII	Yes	Yes	Region 7 had one instance where one of our states was using the title V fees for grant matching funds. This matter was discovered approximately in the mid to late 1990's.	The grant was withheld until the issue was resolved. This information is based on recall from people who have been in the air program for some time. The files are no longer in the Regional office due to archive/recycle procedures.
VIII	Yes	No	However, in 1999, Region VIII received a request from a state through its legislature asking if it was acceptable to use Title V funds to perform modeling to support the ozone SIP.	The request was formally denied by pointing to existing EPA guidance on acceptable activities for Title V fees.
IX	Yes	No	Maricopa County, we found that the program was not being managed well. However, we did not make a	Region IX issued a notice of deficiency and required the agency had to follow up by developing a workload model to assure proper staffing, and demonstrate that

			<p>determination that the funding was being misappropriated, it was simply not being tracked well and the staff salary was too low to maintain their staff.</p> <p>In Clark County, we found that the agency was tracking very well the fees collected, but it was not tracking well how the money was being used.</p>	<p>they were tracking and collecting enough fees to manage the program well. The agency has done both. The agency had to revise its rules to raise staff salary</p> <p>In Clarke County, no significant problems were encountered in managing the title V program, so we are recommending that they modify their title V fee tracking to ensure proper tracking of fee expenditures. They have already modified their tracking system though the final program evaluation report is not yet final.</p>
	Yes	Yes	<p>We just faced this issue with a local air agency in Washington State.</p>	<p>Region 10 did not seek collection of the funds after the agency agreed to revise their rules to address the issue to our satisfaction. Our reasoning for not asking for the return of funds was:</p> <p>In summary, we stand to put a fair amount of effort to conduct a forensic review of time -tracking archives with no guarantee of a defensible outcome. Further our result may have little change to the permitted entities that are potentially affected. Amount in question was slightly in excess of \$100,000 dollars</p>



